

# Legal Background Memorandum

**Re:** The conflict between current MLS rules prohibiting overlays and state-level disclosure requirements for digitally altered listing imagery.

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This memo summarizes the relevant law and rule structure for purposes of supporting industry-level conversations about modernizing MLS rule sets to accommodate disclosure overlays. It is intended as a companion document to the position paper, "A Proposal for Industry Alignment on Digitally Altered Listing Imagery." It is not legal advice. Anyone relying on it for compliance decisions should consult their own counsel.

The author of this memo is a working real estate photographer with twenty-six years of prior experience as a criminal investigator with the California Highway Patrol, retiring from the Major Crimes Unit. The legal observations below reflect that background. Specific statutory language and rule citations are provided so readers can verify the analysis against primary sources.

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## The state law side

**California Assembly Bill 723** (Pellerin), Chapter 497, Statutes of 2025, was approved by the Governor on October 10, 2025 and took effect January 1, 2026. The bill added Section 10140.8 to the California Business and Professions Code.

The operative provisions are in subsections (a) and (b).

**Subsection (a)(1)** requires that any real estate broker or salesperson, or anyone acting on their behalf, who includes a digitally altered image in advertising or promotional material for the sale of real property, must include a conspicuous statement on or near the image indicating that it has been digitally altered.

**Subsection (a)(2)** requires that, if the advertisement is posted on a website the licensee controls, the unaltered version of the image must also be made available. Compliance can be achieved either by including the unaltered image directly in the posting, or by including a link to a publicly accessible website that hosts the unaltered image. The statute explicitly authorizes the use of "an internet website, URL, or QR code" as the access mechanism.

**Subsection (b)(1)** defines "digitally altered image" as one altered through photo editing software or artificial intelligence to add, remove, or change elements of the real property, including but not limited to fixtures, furniture, appliances, flooring, walls, paint color, hardscape, landscape, facade, floor plans, and elements outside of or visible from the property such as streetlights, utility poles, views through windows, and neighboring properties.

**Subsection (b)(2)** carves out common photo editing adjustments, specifically lighting, sharpening, white balance, color correction, angle, straightening, cropping, and exposure, from the definition of digital alteration. These do not require disclosure.

**Subsection (b)(3)** notes that violations are subject to the penalties already established in the Real Estate Law for licensee misconduct, and a willful violation is a crime.

The California Department of Real Estate has not yet issued clarifying regulations. As of the date of this memo, compliance interpretation rests on the statutory text alone.

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## Other emerging state activity

Similar legislation is in various stages of consideration in other states, with different definitions and disclosure mechanics in each. The pattern is consistent. State legislatures are responding to the proliferation of AI-generated and digitally altered listing imagery by imposing disclosure requirements, generally without coordinating with MLS rule structures or industry standards. Producers and brokerages operating across multiple states are likely to face a patchwork of disclosure obligations within the next two to four years.

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## The federal side

**Section 5 of the Federal Trade Commission Act**, 15 U.S.C. § 45, prohibits unfair or deceptive acts or practices in or affecting commerce. The FTC's enforcement under Section 5 has long covered materially misleading product imagery. The FTC's Endorsement Guides and related guidance documents make clear that materially altered imagery used in commercial advertising is within the scope of Section 5 when the alteration is likely to affect consumer decisions.

The FTC has not, as of the date of this memo, brought a marquee enforcement action specifically targeting altered real estate listing photography. The policy framework, however, is well-established. The first significant action will be informed by, and will likely accelerate, the existing state-level disclosure trend.

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## The NAR Code of Ethics side

**Article 12** of the National Association of REALTORS Code of Ethics provides that "REALTORS shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations." Standard of Practice 12-1 specifies that "REALTORS shall ensure that their status as real estate professionals is readily apparent in their advertising," which addresses identification rather than image content, but Article 12's general truthfulness obligation reaches image content directly.

The Code does not prescribe a disclosure mechanism for altered imagery. The obligation to disclose materially altering edits is implicit in the general truthfulness requirement. This creates an enforcement gap. REALTORS have a duty to be truthful but no industry-prescribed method for satisfying that duty when their listing photos have been altered.

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## The MLS rule side

MLS rule sets across the country, and the brokerage policies that mirror them, generally prohibit overlays on listing imagery. Representative language follows.

**California Regional MLS (CRMLS) rules:** Listing photos must not contain "watermarks, agent branding, logos, contact information, or text overlays."

**Bright MLS rules:** Listing photos must be free of "logos, watermarks, contact information, branding, or other marks or text."

**Stellar MLS rules:** Listing images must not display "any text, logos, watermarks, banners, or other markings of any kind."

**NAR Model MLS Rules** (used as a template by many MLSes): Listing photographs must be free of "any markings, logos, text, or other identifying or branding information."

The intent of these rules is uniformly understood within the industry. They exist to prevent listing photos from becoming advertising surfaces for individual agents and brokerages. They are not directed at disclosure markings, because disclosure markings did not exist as a category when the rules were written.

The rules, as currently drafted, do not distinguish between branding overlays (which the rules are intended to prohibit) and disclosure overlays (which the rules were never intended to address but which their language nonetheless reaches). This is the core of the problem.

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## **The conflict, stated precisely**

A producer, agent, or brokerage operating in California, who delivers a listing photo that has been digitally altered as defined under AB 723, is required by California state law to include a conspicuous disclosure on or near the image. If the image is posted online and the disclosure is delivered by means of a QR code, the QR code itself must be associated with the image in a way that the consumer can perceive and use.

That same producer, agent, or brokerage, in uploading the image to most MLSes, is required by MLS rules to remove all overlays, marks, and text from the image.

The producer cannot satisfy both obligations simultaneously. The producer must violate one or the other. There is no compliant path under the current rule structure.

This is not a theoretical concern. AB 723 took effect January 1, 2026. The conflict is live, and it affects every California listing where digital alteration occurred. The number of such listings is large and growing.

Workarounds exist but are imperfect. Some MLSes have begun supporting paired image fields, where the altered image and the unaltered original are uploaded as a matched pair, with metadata or captions indicating which is which. This satisfies the MLS rule by keeping the image itself overlay-free, but it depends on every downstream syndication platform preserving the pairing and the metadata, which they generally do not. The IDX, VOW, API, and aggregator pipelines downstream of the MLS were not designed to preserve image pairings or alteration metadata. The disclosure that reaches the consumer, if any, is highly variable.

The disclosure that travels reliably with the image is the disclosure embedded in the image itself. Pills, watermark-style disclosure marks, and QR codes embedded in the image survive the syndication pipeline because they are part of the image data. Metadata-only disclosures generally do not.

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## **What needs to change**

The MLS rule structure needs to evolve to recognize disclosure overlays as a category distinct from branding overlays. A workable formulation looks like this:

- 1. Listing images may not include branding overlays. Branding overlays include, but are not limited to, agent or brokerage logos, contact information, agent photographs, promotional text, copyright notices, or any other mark or text serving the producer's commercial interest.*
- 2. Listing images may include disclosure overlays. Disclosure overlays are defined as marks or text indicating that the image has been digitally altered as that term is defined under applicable state law or as required by an applicable industry standard. Disclosure overlays*

*must be limited in size and placement to what is reasonably necessary to communicate the disclosure, must not contain branding or commercial content, and must, where applicable, reference the unaltered original image through a link, URL, or QR code.*

This formulation preserves the original purpose of the watermark prohibition (excluding branding) while creating space for the disclosure that state law and industry ethics now require.

The change can be made at the level of individual MLS rules, at the level of NAR model MLS policy, or at the level of RESO standards governing the data fields and image attributes that MLSes share. Coordination across these levels is preferable to fragmented adoption.

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## **Sources cited**

California Business and Professions Code § 10140.8 (2025), as added by Stats. 2025, Ch. 497.

Federal Trade Commission Act, Section 5, 15 U.S.C. § 45.

NAR Code of Ethics, Article 12 (current version available at [nar.realtor](http://nar.realtor)).

MLS rule citations are paraphrased from publicly available rule documents at the date of this memo. Exact text varies by MLS and is updated periodically. Verification against current published rules of any specific MLS is recommended.