



When is a Four Bedroom House Not a Four Bedroom House?

By the Demco Law Firm, P.S.

If a home is on a septic system which has been approved for only three bedrooms, the house cannot be advertised as having any more than three bedrooms. Any house on a septic system cannot be advertised as having more bedrooms than what the septic system has been approved to support. This is so, even though the house design clearly appears to include more bedrooms. Courts have held that when an agent states in a listing or advertising that a house has a certain number of bedrooms, and the agent knows or suspects that the septic system is only approved for a lesser number of bedrooms, the *agent is liable under State consumer protection act laws*. That typically means *the agent can be held liable not only for the actual damages sustained, but also for extra penalty damages and attorney's fees*. *Typical errors and omissions insurance policies do not cover penalty damages for consumer protection act violations*.

In an attempt to be truthful, agents sometimes list a house as, for example, a "four bedroom" but in the "remarks" section of the listing, or elsewhere, disclose that it has septic approval for only three bedrooms. Don't count on this practice keeping you out of the courtroom. The buyers will later claim that it was deceptive to list the house as a "four bedroom". The buyers may not realize all the consequences of assuming the house has four bedrooms when it's only approved for three. For example, they could run into trouble later if they apply for a permit to remodel or upgrade the house. The extra room can be advertised as a "bonus room", "den", or the like, but not a bedroom.

Often, the listing property owner will get very upset when told that their four bedroom house can only be advertised as a three bedroom, or their three bedroom only as a two bedroom. Obviously, this affects pricing. However, the owner, like the agent, faces legal liability if the home is wrongly advertised.

If you know or suspect a house has septic approval for some certain number of bedrooms, don't list or advertise it has having any more.

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