

Date of Hearing: April 1, 2025

Fiscal: Yes

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Rebecca Bauer-Kahan, Chair

AB 723 (Pellerin) – As Introduced February 14, 2025

PROPOSED AMENDMENTS

SUBJECT: Real estate: digitally altered images: disclosure

SYNOPSIS

Since the advent of the internet, one can search real estate listings almost anywhere in the world, at any time of day. Going to open houses and scheduling viewings of properties takes time and resources. If real property for sale is not accurately represented online, and in other marketing materials, making the effort to see a property in person can be a disappointment and a shock if the advertising images for the property have been digitally altered and are not close representations of the actual property – a practice made easy through consumer-facing photo-editing tools.

This author-sponsored bill sheds light on this practice and aims to curb abuses that can mislead home buyers when searching for real estate listings online. The bill would require real estate brokers and salespersons to disclose in advertisements for the sale of real property any images of the property that have been digitally altered, enabling consumers to make more informed decisions during the home search.

Amendments described in Comment #7 narrow the scope of the bill to, among other things, exclude minimal photo-editing techniques that do not pose a risk of misleading consumers. California Building Industry Association opposes the bill, asserting without explanation that it raises costs and exacerbates the housing crisis.

THIS BILL:

- 1) Requires a real estate broker or salesperson who includes a digitally altered image in an advertisement or other promotional material for the sale of real property, to include a statement disclosing that the image has been altered.
- 2) Requires, if the advertisement or promotional material is posted on an internet website, the real estate broker or salesperson to include the same images without digital alteration.
- 3) Defines “digitally altered image” as an image that has been altered through the use of photo editing software or artificial intelligence to add, remove, or change elements in the image, including, but not limited to, furniture, appliances, and walls. Excludes from this definition the use of photo editing software to adjust lighting.

EXISTING LAW:

- 1) Prohibits, for any real property offered for sale or lease, any advertisement, pamphlet, prospectus or letter concerning any said land or subdivision, containing any written statement

that is false or fraudulent, is a public offense, and shall be punished by a fine not exceeding \$1,000, or by imprisonment in a county jail not exceeding one year. (Bus. & Prof. Code § 10140.)

- 2) Defines “real estate broker” as a person licensed pursuant to Business and Professions Code section 10130 et seq. (Bus. & Prof. Code § 10015.)
- 3) Defines “real estate salesperson” to mean a natural person licensed as a salesperson and who, for compensation or in expectation of compensation, is retained by a real estate broker to conduct licensed real estate activities. (Bus. & Prof. Code § 10016.)
- 4) Defines “responsible broker” to mean the real estate broker responsible for the exercise of control and supervision of real estate salespersons, as specified. (Bus. & Prof. Code § 10015.1.)
- 5) Defines “artificial intelligence” as an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments. (Gov. Code § 11547.64(a).)

COMMENTS:

1) **Author’s statement.** The author writes:

Increasingly, real estate listings are using AI-manipulated images of the unit, or “digitally staged” photos, to show significantly enhanced versions of the unit to prospective consumers. Without disclosures or photos of the actual state of the listing, consumers are misled into investing time and money into real estate listings that are not in fact like the photos they may see online.

AB 723 will require that unaltered photos of real estate listings be included alongside with the altered photos in online listings. This will ensure that consumers can identify where and which elements have been altered in the listing photos. Furthermore, AB 723 will require a disclosure on the digitally altered images to indicate that they have had elements added, removed, and, or, changed.

2) **Real estate staging.** Real estate salespeople and property owners have been staging sale properties for decades. Furniture and décor are temporarily moved into an empty property and arranged in visually pleasing ways to give buyers an idea of the home’s potential. If the sellers are still living in the property, a home staging service can suggest ways for the owner to declutter and depersonalize the space in preparation for photos and open houses or even swap out some of the owner’s belongings with more current décor and furniture. Usually only a few rooms are staged, as the expense adds up quickly. According to Redfin.com, traditional staging can, on average, cost anywhere from \$500 to \$600 per room, depending on several factors.¹ Some salespeople and brokers offer home staging as a provided service included in their listing package, but often the property owners pay for home staging.

¹Redfin|Blog, “Virtual Staging: An Innovative Way to Impress Buyers,” www.redfin.com/blog/impress-buyers-with-virtual-staging/.

3) **Enter digital staging.** Digital staging is a useful and economical way to portray a real estate listing in its best light. Digital staging can insert or change elements of a real property including furniture, décor, landscaping, wall color, and bathroom or kitchen elements to highlight the home's possibilities. It can also remove elements from images including out-of-date furniture and décor, as well as personal belongings. Virtual staging can become misleading when it is used to substantially alter the condition of the property, including by improving unappealing views from windows that cannot be changed, removing unsightly features, repairing damage, and upgrading fixtures.

In the example below, where a door is blocked by the presence of a desk, the watermarked “Virtual Staging” disclosure indicates to the consumer that they should carefully consider the implied dimensions of the room with skepticism.



Another real estate listing, below, provided by the author's office, includes a depiction of a fully furnished kitchen with cabinetry and countertops, as well as a kitchen island with a breakfast bar. In reality, these fixtures were not in the home. After driving hours to the property, the potential buyers discovered that the kitchen was lacking cabinetry, countertops, and an island. Kitchen remodels are one of the most expensive remodeling projects in a home, due to complex designs, expensive finishes, appliances, and electrical, plumbing, and venting requirements that buyers may not be able to afford along with the initial property purchase.



Virtually altered image of the kitchen with fixtures, cabinetry, and furniture.



Actual kitchen from another angle.

4) **Realtors' duty to avoid deceptive advertising.** Regarding "Virtual Staging and Risk of False Advertising," the California Association of Realtors (CAR) states in its "Staging Properties Quick Guide":

Realtors need to use caution and not engage in false or misleading advertising when using virtual staging in their marketing. Digitally changing furniture or fixtures is one thing, but the property itself, inside or outside, or the view, should not be digitally altered in any way that could mislead a potential buyer – without a clear, explicit, warning or notice about the alteration. For example, "Here is what the yard could look like with all brush and debris removed." Remember, Article 12 of the NAR Code of Ethics states 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.”²

The National Association of Realtors (NAR) and CAR already urge their members to disclose when they virtually stage a property they have listed for sale in order to avoid misleading advertising. As a member association of NAR, CAR is required to follow NAR’s Code of Ethics. The first paragraph of NAR’s Code of Ethics Article 12 reads:

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

REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.³

The Code of Ethics Standard of Practice 12-10 goes on to state:

REALTORS®’ obligation to present a true picture in their advertising and representations to the public includes Internet content, images, and the URLs and domain names they use, and prohibits REALTORS® from:

- 1) engaging in deceptive or unauthorized framing of real estate brokerage websites;
- 2) manipulating (e.g., presenting content developed by others) listing and other content in any way that produces a deceptive or misleading result;
- 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic; or
- 4) presenting content developed by others without either attribution or without permission; or
- 5) otherwise misleading consumers, including use of misleading images.⁴

And the California Department of Real Estate’s publication “Real Estate Advertising Guidelines” states:

Real estate licensees may not publish, advertise, distribute, or circulate any material or information that is false, deceptive, or misleading. While deliberate efforts to mislead or deceive are clear violations of the law, making false or misleading statements that one should have known are untrue may also lead to disciplinary action. Claiming ignorance when one should have known the truth is not a defense, nor is carelessness or negligence.

² California Association of Realtors, “Staging Properties Quick Guide,” www.car.org/-/media/CAR/Documents/Transaction-Center/PDF/QUICK-GUIDES/Quick-Guide---Staging-Properties.pdf.

³ National Association of Realtors, “2025 Code of Ethics & Standards of Practice,” www.nar.realtor/about-nar/governing-documents/code-of-ethics/2025-code-of-ethics-standards-of-practice.

⁴ *Ibid.*

Putting advertising together that is false, misleading, or deceptive may subject a licensee to disciplinary action. Licensees have a clear responsibility for ensuring their advertising is not misleading or deceptive.⁵

5) **What this bill would do.** This bill would require that a digitally altered image used in an advertisement or other promotional material for the sale of real estate include a disclosure stating that the image has been digitally altered. If the advertisement or promotional material is hosted on an internet website, the real estate broker or salesperson must also include the unaltered version of the image, in addition to the statement disclosing the image was digitally altered. The end goal of including a disclosure and unaltered version of an image is to alert consumers to look at the image with a dose of skepticism. This bill would help protect Californians shopping for real estate by enabling them to know whether or not what they see in advertisements is indeed real, or if they need to investigate the actual condition of the property further.

6) **Opposition.** In opposition, the California Building Industry Association asserts, without substantiating, that the bill “imposes onerous and costly requirements that will further exacerbate the state’s housing crisis.” But if a broker or salesperson has the tech savvy to digitally alter images, it is difficult to see why the additional steps of disclosing the alteration and uploading the original is “onerous” or “costly” – let alone significant enough to “exacerbate the state’s housing shortage.”

7) **Amendments.** The author has agreed to amend the bill to narrow the scope of the bill and exclude from the disclosure requirement additional common photo-editing techniques that pose little risk of misleading consumers. The amendments also require the disclosure to be reasonably conspicuous and allow for the original image to be provided by a link rather than posting the image. The amendments are as follows:

10140.8. (a) (1) A real estate broker or salesperson who includes a digitally altered image in an advertisement or other promotional material for the sale of real property shall include in the advertisement or promotional material a statement disclosing that the image has been altered. *The statement shall be reasonably conspicuous and located on or adjacent to the image.*

(2) If the advertisement or promotional material is posted on an internet website, the real estate broker or salesperson shall include the unaltered version of the images for which a digitally altered image is included in the posting.

(3) *A real estate broker or salesperson may comply with the requirement in paragraph (2) by including a link to the original image.*

(b) (1) For purposes of this section, “digitally altered image” means ~~a~~ *still-photo* image, *created by or at the behest of the real estate broker or salesperson*, that has been altered through the use of photo editing software or artificial intelligence to add, remove, or change elements *of the real property* in the image, including, but not limited to, furniture, appliances, *flooring* and walls.

⁵ California Department of Real Estate, “Real Estate Advertising Guidelines,” www.dre.ca.gov/files/pdf/re27.pdf.

(2) “Digitally altered image” does not include the use of photo editing software to adjust lighting, *sharpening, white balance, color correction, angle, straightening, cropping, exposure, or other common photo editing adjustments that do not change the condition of the real property.*

ARGUMENTS IN OPPOSITION: The California Building Industry Association opposes the bill. The substantive content of their letter, in its entirety, is as follows:

The California Building Industry Association (CBIA) opposes AB 723 (Pellerin), which imposes onerous and costly requirements that will further exacerbate the state’s housing crisis.

For these and other reasons, CBIA respectfully requests a “NO” vote on AB 723.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

California Building Industry Association (CBIA)

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