Real Estate Advertising Guidelines



CALIFORNIA DEPARTMENT OF REAL ESTATE

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GAVIN NEWSOM
Governor

LOURDES M. CASTRO RAMÍREZ
Secretary
Business, Consumer Services and Housing Agency

DOUGLAS R. MCCAULEY
Commissioner
Department of Real Estate



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CALIFORNIA DEPARTMENT OF REAL ESTATE
1651 EXPOSITION BOULEVARD, SACRAMENTO, CA 95815
WWW.DRE.CA.GOV
(877) 373-4542

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Disclaimer

These guidelines are intended to assist California real estate licensees—brokers and salespersons—in understanding the many advertising requirements they are expected to know and follow.

Not all advertising and licensee-related obligations and responsibilities under the Real Estate Law or other local, state, and federal laws are addressed in this publication. However, we try to identify the most frequently asked questions and the most often misunderstood requirements. This is a quick reference guide to current statutory and regulatory requirements. Nothing in this guide should be interpreted as legal advice. Given the ever-evolving tapestry of business practices, technological advances, and changes in law, this guide is designed to be a living document. Check the Department's website for periodic updates and advisories.

Unless otherwise noted, all references to "Bus. & Prof. Code section" refer to the California Business and Professions Code, while "CCR" references refer to regulations of the California Code of Regulations, also known as the Regulations of the Real Estate Commissioner. All laws and regulations cited are located in the Department's Real Estate Law Book, which is available on the Department of Real Estate's (DRE) website at www.dre.ca.gov/Publications/RealEstateLaw.html.

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Introduction

Whatever one's role may be in the real estate industry, advertising most likely plays a key part in their activities and ultimate success. Advertising identifies the licensee and their activities, and it spotlights the message that one wishes to convey to potential clients. The effectiveness of one's advertising may determine why only a single client visits the office or why people are lined up outside the door. Effective advertising may bring the rewards that one seeks, but a real estate licensee's advertising must also be lawful.



Each real estate licensee, depending upon the type of license held—and nature of licensed activities conducted—must comply with all real estate laws. It behooves the licensee, then, to become familiar with, understand, and take steps to meet all advertising requirements set forth by code or regulation. Failure to know the standards of the occupation may impact the good standing of one's license. Licensees should know the requirements, stay in compliance, and avoid the pitfalls that may adversely affect one's license.

This guide will identify and highlight the many advertising requirements a licensee should know. Let's start by identifying a few basic definitions.

Basic Definitions

When considering licensed real estate activities, become familiar with these basic definitions.

Licensee: a person, whether broker or salesperson, licensed by the DRE. (Bus. & Prof. Code section 10011)

Real Estate Broker: a person licensed as a broker. (Bus. & Prof. Code section 10012)

Real Estate Salesperson: a natural person licensed as a salesperson and who, for a compensation or in expectation of compensation, is retained by a real estate broker to conduct licensed real estate activities. (Bus. & Prof. Code sections 10013 and 10016)

Designated Officer: the corporate officer designated by a licensed corporation to engage in the business of real estate broker on behalf of the corporation.

Responsible Broker: the real estate broker responsible for supervising and overseeing the licensed acts of real estate salespersons and broker-associates affiliated with and working under the broker's supervision, regardless of independent contractor or an employment relationship. (Bus. & Prof. Code sections 10010.5(b)(1) and 10015.1)

Manager: a real estate licensee authorized to perform supervisorial services for a responsible broker. (Bus. & Prof. Code section 10015.2)

Broker-Associate: a broker retained by a responsible broker to provide services requiring a real estate license on behalf of the responsible broker, often working in the capacity of a salesperson. (Bus. & Prof. Code section 10015.3)

Responsible Broker's Identity: the name under which the responsible broker is currently licensed by DRE and conducts business in general or is a substantial division of the real estate firm, or both the name and associated license identification number. (Bus. & Prof. Code section 10015.4)

Professional Identity: includes "responsible broker's identity" and the identity under which the licensee is authorized to do business. (Bus. & Prof. Code section 10015.5)

Supervision Responsibility

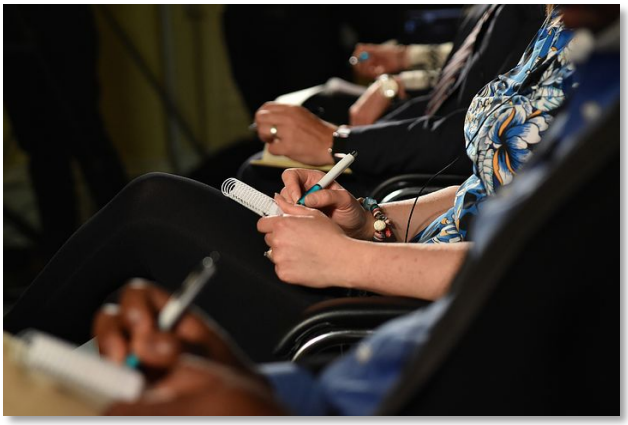
Whatever the type of license held, real estate licensees must know and comply with all aspects of Real Estate Law that govern licensed real estate conduct in California. More importantly, responsible brokers (i.e., brokers and designated officers of corporations) should know that they are responsible for the actions or negligence of salespersons or broker-associates retained by the responsible broker. The failure to properly supervise may result in disciplinary action. (Bus. & Prof. Code sections 10010.5(b)(2) and 10015.1)

The Real Estate Law requires responsible brokers and corporations to exercise reasonable supervision over the activities of their salespersons and broker associates. Reasonable supervision includes the establishment of policies, rules, procedures, and systems necessary to review, oversee, inspect, and manage all aspects of the business, including the following:

- Transactions requiring a real estate license;
- Documents that may have a material effect upon the rights or obligations of a party to the transaction;
- Filing, storage, and maintenance of such documents;
- The handling of trust funds;
- Advertising of any service for which a license is required;
- Familiarizing salespersons and broker associates with the requirements of federal and state laws relating to the prohibition of discrimination; and
- Regular and consistent reports of licensed activities of salespersons and broker associates.

Responsible brokers must establish and have in place a system for monitoring compliance with policies, rules, procedures, and systems. This means that they, along with those persons they designate to manage or supervise on their behalf, must actively supervise the conduct of licensees.

Generally, this means that responsible brokers—and the managers, branch managers, and supervisors they retain—should review the licensed real estate activities and advertising conducted by their affiliates, businesses, and offices with methods sufficient to ensure compliance with the Real Estate Law.



The responsible broker is accountable for proper supervision. While the DRE does not set forth specific requirements of what each real estate office must do to ensure compliance, the form and extent of a responsible broker's policies, rules, procedures, and systems must be sufficient to ensure compliance. Whatever the size or nature of the business, the responsible broker's procedures and policies should also take into consideration the number of salespersons and broker-associates retained and the number and location of branch offices.

An active involvement with and supervision of those persons working under the responsible broker's license will go a long way towards being and staying in compliance.

Compliance Expectation

Real estate licensees are expected to comply with all applicable laws and regulations, including those pertaining to advertising. The failure to comply could result in the issuance of a citation and assessment of a fine or, where more serious violations are involved, more formal disciplinary action. Depending upon the

nature of the violation, formal discipline may take the form of a public reproval, license suspension, restricted license or an outright license revocation. In addition to these administrative consequences, other local, state, or federal laws may apply and violators may also find themselves subject to criminal or civil charges. (CCR 2725)

Advertising

What is Advertising?

Advertising is a form of communication that uses signs, symbols, or actions to create or raise awareness of a business or products, promote a brand, or bring in customers.



Advertising for real estate attracts sellers, buyers, investors, renters, or other persons interested in the services or products offered. Some of the forms of advertising may include any one or a combination of the following:

- Social media ads;
- Printed material (flyers, handouts, newspapers, magazines, brochures, business cards);
- Electronic media (internet, websites, text messages, telephone calls, emails, television, radio, cinema, streaming video and audio);
- Promotional events, including open houses;
- Billboards;
- Signs.

Basic Requirements

License Required to Advertise

With few exceptions, only real estate licensees may offer their services and solicit clients. If a person is a principal and acting on that person's own behalf, a real estate license is not required. However, if a person represents another party (i.e., act for or on behalf of another person in an agency capacity), expect or receive compensation, and perform any of the following regulated activities, then a real estate license is required:

- Solicit prospective sellers or purchasers of real estate or a business opportunity;
- Lease or rent, offer to lease, or rent, or place for rent, or solicit listings of places for rent, or solicit for prospective tenants, or negotiate the sale, purchase or negotiate the sale, purchase or exchanges of leases on real property, or collect rents from real property, or improvements thereon, or from business opportunities;
- Assist or offer to assist in filing an application for the purchase or lease of, or in locating or entering, upon lands owned by the state or federal government;
- Solicit borrowers or lenders, offer to negotiate loans, collect payments, or perform services for borrowers or lenders or note owners in connection with loans secured by liens or real property or on a business opportunity;
- Sell or offer to sell, buy or offer to buy, exchange or offer to exchange a real property secured by a lien on real property or on a business opportunity and perform services for the holders.

Before engaging in the business of or advertising as a real estate broker or real estate salesperson, one must first be licensed in this state as a real estate broker or salesperson. Failing to obtain a license *before* conducting licensed real estate activities (the activities identified above) is unlawful and may

result in administrative, civil, and criminal sanctions. If in doubt, check with the Department before opening a business, starting activities, or advertising services. (Bus. & Prof. Code sections 10130 and 10131; CCR 2770.1, 2773, 2847.3, and 2848)

False, Deceptive, or Misleading Advertisements

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.

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.

When advertising, a licensee should be able to substantiate any of the information in the advertisement on request.

Avoid Bait and Switch

On occasion, licensees may offer in their advertisements and solicitation materials incentives and/or terms that are at first glance more favorable than those offered by other licensees in the same marketplace. This could take the form of lower interest rates, lower fees, merchandise, or other goods.

For example, a prospective customer may be baited to call a licensee by a "too good to be true" teaser price in an advertisement, only to be told the advertised price is no longer available. The advertiser then tries to sell to the consumer the more expensive product. Is there an issue here? Maybe.

In some instances, there may be exclusionary or limiting terms, such as making the offer good for a limited number of transactions or only good for a limited period of time. Use of the terms "terms and conditions apply", however, should not materially change or reduce the offer. If the terms and conditions materially alter the program from the description in the headline, then that may be considered "bait and switch" and is unlawful.



Details of all restrictions or terms and conditions must be available to consumers before the consumer is asked to sign a contract or otherwise become obligated. Furthermore, if it is found that the teaser price or conditions were never available, then the advertisement would be dishonest and may become the basis for disciplinary action. (Bus. & Prof. Code section 10140)

Font Size

Depending on the message that one wants to convey, the advertising medium used, or the size of the advertisement intended, a number of different fonts and font sizes may be used. When considering the size of the font to use for required disclosures (e.g., license identification number, name of responsible broker, identification of licensing authority, etc.), use a font size that is no smaller than that used in the advertisement. If the font size of the smallest text used in the advertisement is 12-point, then required disclosures should be in an equal or greater font size. Licensees should avoid "mice type" or material that is sized so small that it cannot be clearly read. (Bus. & Prof. Code sections 10140.6, 10159.5, 10159.6, and 10159.7; CCR 2773)

License Designation

Real estate licensees advertising in print media, such as newspapers and periodicals, must disclose that they are licensed as a real estate salesperson or broker by the State of California. This requirement may be satisfied by use of the following terms: broker, agent, realtor, loan correspondent, or the abbreviations bro., agt., or other similar terms or abbreviations. (Bus. & Prof. Code section 10140.6; CCR 2770.1)



Disclosure of License Number - First Point of Contact Material

Solicitation or promotional materials intended to be the first point of contact with consumers include the following:

- Business cards;
- Stationery;
- Websites owned, controlled, and/or maintained by the soliciting real estate licensee;
- Promotional and advertising flyers, postal mail, leaflets, and any marketing or promotional materials designed to solicit the creation of a professional relationship between the licensee and a consumer, or which is intended to incentivize, induce, or entice a consumer to contact the licensee about any service for which a license is required;
- Advertisements in electronic media (including, without limitation, internet, email, radio, cinema, and television advertisements, and the opening section of streaming video and audio);
- Print advertising in any newspaper or periodical; and
- "For sale," "for rent," "for lease," "open house," and directional signs that display the name of the licensee.

For first point of contact materials, a real estate broker or salesperson is required to disclose, at a minimum: (1) the real estate license identification number; (2) the responsible broker's licensed name; and (3) the Nationwide Mortgage Licensing System (NMLS) unique identifier endorsement number (if a mortgage loan originator). If the name of more than one licensee appears in the solicitation, then the license number of each licensee must also be disclosed.

The license identification numbers of responsible or corporate brokers whose names, logos, or trademarks appear on solicitation materials along with the names and license numbers of salespersons or broker associates do not need to appear on those materials. Finally, if the advertising is in written form, then the type size of the license identification number must be no smaller than the smallest size type used in the advertisement. (Bus. & Prof. Code section 10140.6; CCR 2773)

Keep Advertisements Current

Long lasting advertisements may present a special challenge for real estate licensees. Advertisements, such as telephone directories, billboards, Internet websites, or other signage may last for months or years after initially created. Conditions and terms may have changed over time, such that the advertising no longer reflects current conditions, name changes, or changes of the brokerage that were in place at the time the advertisements were purchased. Changes may have occurred from the time a print advertisement is bought, printed and/or distributed.

The old advertisement may not reflect an address change, change of business name, change of

business ownership, or current, available terms and conditions. One should consider the lifespan of the advertising before placing advertisements. Licensees should track and monitor advertisements periodically and look out for when circumstances and conditions change to be able to identify needed updates. Licensees also should make every effort possible to update or remove advertising that is no longer accurate to avoid misleading, deceptive, or false statements. (Bus. & Prof. Code section 10140)

Specific Advertising Requirements

Fictitious Business Names or "Doing Business As" (DBAs) – Brokers

A real estate broker (individual or corporate) may only conduct licensed real estate activities in the legal name in which the Department has issued a real estate license, unless the broker has properly filed for and licensed a fictitious business name.

A fictitious business name or DBA is an alternative name for the broker—individual or corporate—licensee, who prefers to use a name other than their legal name to conduct business. It is defined as "the professional identity or brand name under which activity requiring a real estate license is conducted and the use of which is subject to approval by the Department…."

Only real estate brokers may file a fictitious business name with the Department and be approved to conduct business through the issuance of a license under the fictitious business name. A real estate broker may not use a fictitious business name unless the responsible broker is the holder of the license bearing the fictitious name and/or a retained affiliate of the responsible broker who is permitted to use the fictitious name. The Department may refuse to approve a fictitious name for use if the fictitious name:

- Is misleading or would constitute false advertising;
- Implies a partnership or corporation when a partnership or corporation does not exist;
- Includes the name of a real estate salesperson; or
- Is the name formerly used by a licensee whose license has since been revoked.



There is no limit on the number of DBAs a licensee may obtain and use. (Bus. & Prof. Code section 10159.5; CCR 2731)

Fictitious Business Names or DBAs – Salespersons

There may be times when real estate salespersons would like to use a particular fictitious business name…and would like to "own" the name to be able to take the name with them should they change responsible brokers. While the Department only approves fictitious business names for brokers, a responsible broker may, by contract, permit a salesperson to "own" and use a fictitious business name. This fictitious business name may then be submitted to the Department for approval.

If a responsible broker permits an affiliated salesperson to use a fictitious business name, then the process to obtain Departmental approval is to:

- File an application on behalf of the responsible broker with a county clerk to obtain a fictitious business name;
- Deliver to the Department an application, signed by the responsible broker, requesting the Department's approval to use a county-approved fictitious business name to be identified with the responsible broker's license number;

- Pay for any fees associated with filing an application with a county or the Department to obtain or use a fictitious business name; and

- Maintain ownership of a fictitious business name that may be used subject to the supervision of the responsible broker.

If a fictitious business name is "owned" by a salesperson, then advertisements and solicitation materials using the fictitious business name must include the name and license number of the salesperson using the fictitious business name, as well as the responsible broker's identity in a manner equally as prominent as the fictitious business name. Remember, the use of a salesperson "owned" fictitious business name is subject to the supervision and approval of the responsible broker. (Bus. & Prof. Code sections 10159.5 and 10159.7; CCR 2731)

Team Names

A team name is the professional identity or brand name used by two or more real estate licensees who work together to provide licensed real estate services. It is not considered a fictitious business name under the Real Estate Law, so there is no paperwork that needs to be submitted to the Department. Some basic requirements for using a team name include the following:

- The team must include two or more real estate licensees.

- It must include the surname of at least one member of the team.

- It must include the term "team," "group," or "associates" in the team name.

- The name cannot use the words "broker," "real estate broker," "real estate brokerage" or any other term that would lead a member of the public to believe the team is offering real estate brokerage services or implies the existence of a real estate entity independent of a responsible broker. (Bus. & Prof. Code section 10159.7)

When advertising, the team must display in a conspicuous and clear manner the team name, and the surname and license number of at least one member of the licensed members of the team on all advertisements and solicitation materials. In addition, the advertisement and solicitation materials must include the name of the responsible broker or the broker's name and license number. (Bus. & Prof. Code section 10159.6)

COMPLIANT TEAM NAME EXAMPLES

ISLAND TEAM
Jay Island
DRE #00124523
Hopkins Realty

- Includes surname of team member
- Includes required group, team, or associates
- Includes license number of team member
- Includes responsible broker name

TORRE Group
Diane Torre
DRE #00124532
Ide Real Estate

- Includes surname of team member
- Includes required group, team, or associates
- Includes license number of team member
- Includes responsible broker name

NON-COMPLIANT TEAM NAME EXAMPLES

A+ Partners
Jim Smith
Short Sale
CCR Realty

- Includes surname of team member
- Does not include required group, team, or associates
- License number of team member missing
- Includes responsible broker name
- Implies unlicensed partnership

ISLE BROKERS Julie Hopkins Realty
• Does not include surname of team member • Does not include required group, team, or associates • License number of team member missing • Includes responsible broker name • Implies brokerage

Escrow Services

A real estate escrow is a transaction where a party places something, such as money or a real estate deed, into the hands of a neutral, third party until particular conditions have been met. It has become an essential element in most real estate transactions in this state. While escrow activities in California are mainly regulated by other agencies, licensed real estate brokers may perform escrows subject to an exemption in the Escrow Law of the California Financial Code.

When advertising escrow services, a real estate broker cannot imply or indicate that escrows can be conducted without specifying in the advertisement that such services are only in connection with the broker's real estate brokerage business. The broker may not use a fictitious or corporate name containing the word "escrow" unless the fictitious business name includes the term, "a non-independent broker escrow" following the name.

Licensees who have been or are issued a license with a fictitious business name with the term "escrow" or any term which implies that escrow services are provided, must include the term "a non-independent broker escrow" in any advertising, signs, or electronic promotional material. Advertising "escrow" services that are unrelated to the business would be misleading to the public. (CA Financial Code 17006)

Mortgage Loan Advertising

Mortgage loan originators operating under a real estate license offering mortgage loan rates, terms, and conditions for making, purchasing, or negotiating loans or real property sales contracts must disclose in their advertisements their license name, the responsible broker's identity, their DRE license identification number, the responsible broker's DRE license identification number, the licensee's NMLS unique identifier endorsement number (if applicable), the responsible broker's NMLS unique identifier endorsement number (if applicable), and the disclosure of licensure and licensing department. (Bus. & Prof. Code sections 10235.5, 10236.4, and 17539.4; CCR 2847.3)

Real estate brokers who conduct mortgage loan activities may submit proposed advertisements for the Department's review and approval. Advertisements are reviewed for compliance with the requirements of the Business and Professions Code and the Regulations of the Real Estate Commissioner.

The Department does not review advertisements for compliance with federal law or laws of other states. Advertisements sent for review must be submitted in person or mailed to the Department's Sacramento office, attention Mortgage Loan Activities (MLA) section. The fee for reviewing mortgage loan advertising is forty dollars ($40). The Commissioner may disapprove of false or misleading advertising or require verifications of representations in advertising submitted for review. (Bus. & Prof. Code section 10232.1; CCR 2847)

For a detailed list of specific requirements for mortgage-related advertising, see CCR 2848.

Inducements Prohibited

Real estate licensees may not advertise to give or offer to give a prospective purchaser or lender any premium, gift, or any other object of value as an inducement for making a loan, or purchasing a promissory note secured directly or collaterally by a lien on real property or a real property sales contract. (Bus. & Prof. Code section 10236.1)

Advance Fee Agreements and Materials

An advance fee is a fee that is claimed, demanded, charged, received, or collected by a licensee for services requiring a license before the service has

been fully completed.

If a broker intends to collect an advance fee before performing licensed activities then, before soliciting prospective clients, the broker will need to submit all materials to be used in advertising, promoting, soliciting, and negotiating for an advance fee to the Department for review before they are used. Failure to submit such material may result in disciplinary action and/or criminal prosecution. (Bus. & Prof. Code sections 10026, 10085, and 10131.2)

Subdivision Advertising

The advertising requirements for the sale or lease of subdivision interests are fairly simple, in that all claims and representations made in the advertising must be accurate and verifiable. The application (or notice of intention), questionnaire, and the public report itself must be factual. Making inflated statements or using misleading photographs or illustrations creates false and misleading impressions and is unlawful. A list of specific criteria that is used to determine whether subdivision advertising is false, untrue, or misleading may be found in CCR 2799.1.



There are also specific disclaimer disclosures that are required for persons in California who sell or lease or offer for sale or lease lots, parcels, or interest in a subdivision that is outside of California but within the United States, or for subdivisions located outside of the United States. (Bus. & Prof. Code sections 10249.8 and 10249.9)

Developers are reminded that they are responsible for advertising published on their behalf by marketing representatives and salespersons, who may or may not be licensed with the Department.

While developers are not required to submit advertising for review and approval, proposed advertising may be submitted to the Department for review approval prior to its use, publication, distribution, or circulation. The fee for reviewing each advertisement is seventy-five dollars ($75). (Bus. & Prof. Code section 11022; CCR 2799.1)

Timeshare Advertising

A timeshare is an arrangement in which a property is divided into a number of units and the owners of the units have the right to use the property during a specific period of time, often the same week every year. They are typically vacation or resort properties.

Similar to the general advertising requirements for subdivision offerings, timeshare advertising must be straightforward and not contain deceptive or misleading material. Timeshare advertising includes any written, oral, or electronic communications containing a promotion, inducement, or offer to sell a timeshare plan. This may be in the form of brochures, pamphlets, radio and television scripts, electronic media, telephone, direct mail solicitations, and other means of promotion.

Developers are responsible for supervising, managing, and controlling all aspects of the offering of a timeshare plan, including its promotion and advertising, and must avoid any advertising that is false, untrue, or misleading. The Department uses CCR Regulation 2799.1 and Bus. & Prof. Code sections 17500 through 17539 to evaluate such advertising for compliance. (Bus. & Prof. Code sections 11212, 11214, and 17500 – 17539; CCR 2799.1 and 2811)

Mobile Homes

Subject to specific limitations, a real estate broker may be involved with the sale or purchase (i.e., representing buyers or sellers, negotiating transactions, or obtaining listings for sale) of manufactured homes or mobile homes.

When advertising these transactions, the broker:

- Cannot advertise any manufactured or mobile home unless it is either in place on a lot rented or leased for habitation within an established mobile home park;

- Cannot advertise or offer for sale if the advertising for sale is contrary to any terms of a contract between the seller of a manufactured home or mobile home and the owner of the mobile home park;



- Must withdraw any advertisement of a manufactured home or mobile home for sale, lease, or exchange after receipt of notice that the manufactured home or mobile home is no longer available for sale, lease, or exchange;

- Cannot advertise a mobile home as a new mobile home or a manufactured home as a new manufactured home;

- Cannot include as an added cost to the selling price of a mobile home, an amount for licensing;

- Cannot make any representation that a manufactured home or mobile home is capable of being transported on California highways if the manufactured home or mobile home does not meet all of the equipment requirements applicable to manufactured homes or mobile homes or fail to disclose any material fact respecting those equipment requirements; and

- Cannot advertise or otherwise represent, or knowingly allow to be advertised or represented on the real estate licensee's behalf or at the real estate licensee's place of business, that no down payment is required in connection with the sale of a manufactured home or mobile home when down payment is in fact required and the buyer is advised or induced to finance the down payment by a loan. (Bus. & Prof. Code section 10131.7)

Prepaid Rental Listing Services (PRLS)

A prepaid rental listing service supplies prospective tenants with listings of residential real properties for tenancy under an arrangement where prospective tenants are required to pay a fee to obtain the listings. When advertising the PRLS, the licensee should make every effort to avoid making any false, misleading, or deceptive advertisements or representations concerning the services that will be provided to prospective tenants. Advertising or describing the property in a false, misleading, or deceptive manner; referring a property that does not exist or is unavailable; and failing beforehand to obtain permission from the property owner, manager, or other authorized agent to list the property are violations of law. (Bus. & Prof. Code sections 10167 and 10167.11)

Private Vocational School Advertising

In addition to private and public colleges and universities that offer real estate courses to qualify for licensure, there are many private vocational schools that have been approved by the DRE to offer equivalent statutory courses and/or courses that may be applied towards continuing education requirements.

Advertising or promotional material by or on behalf of a private school or other sponsor of an equivalent course of study is considered deceptive or misleading if it does not comply with the following standards:

- An advertisement shall clearly identify and include the name of the entity.

- Advertising making reference to courses of study approved by the Commissioner must identify the specific courses that have been approved by

listing the DRE sponsor approval number.

- Advertising or materials promoting approved courses may not contain language implying or stating that a course can be completed in less time than the number of hours for which it is approved.

- Advertising or materials may not include false or misleading statements.

- Advertising must contain the sponsor identification number assigned by the Department. (CCR 3004, 3007.6)

Other Advertising Issues

"Coming Soon" Signs

"Coming soon" signs are generally used for homes that will be for sale soon but have not yet been placed on the market. This could be because the property is undergoing work that has not been completed, or because the seller is waiting for a particular time. "Coming soon" signs provide a number of benefits. They get people talking, create anticipation, and alert potential buyers and agents in the area. By the time the property is ready and placed on the market, interest has already been generated.

Unfortunately, "coming soon" signs have also been used to limit exposure to the property for a licensee's benefit. Some licensees may use a "coming soon" strategy to obtain an exclusive advantage over other agents. Rather than place the property on the market and be receptive to all offers, the licensee limits exposure to the property and begins accepting offers before the property has been fully marketed. A client's best interests may not be served by such a strategy and such offers may not be totally reflective of the marketplace.

Agents have a fiduciary duty to act in the best interests of their client and to place the client's interests above all others. Licensees are also obligated to disclose everything material in the transaction that may affect their client's decision. An agent may not limit exposure to the property and keep a property from the market when it is not to the benefit of the client. Licensees acting in such a manner expose themselves to the potential for an increased chance of civil liability and regulatory action.



A "coming soon" advertising strategy may be used when it is to a seller's benefit and if handled properly. The following are some best practices for agents when representing a seller:

- Market the property via the multiple listing service or other broad advertising means.

- Make sure the seller agrees to and understands how the property will be marketed.

- If using a "coming soon" strategy, do not accept and act on offers until the property has been broadly marketed.

- If the property will not be fully marketed, obtain prior written permission from the seller that demonstrates understanding that such a "coming soon" strategy may not result in receiving the best sales price.

- Avoid double-ending a property that is not fully marketed—it is best to refer potential buyers to another agent.

Always remember that working as an agent in real estate brings with it a responsibility to act in the best interests of the client with a high standard of care and adopt strategies that truly benefit the client. Such practices will enhance professionalism.

Discrimination, Advertising, and Fair Housing

California law protects individuals from illegal discrimination based on race, color, sex/gender, religion, ancestry, disability, sexual orientation, marital status, medical condition, national origin, gender identity, age, and other classes. When conducting licensed real estate activities, licensees are prohibited from making, printing, publishing, or using advertisements that are discriminatory.

Some examples of prohibited discriminatory advertising include:

- Making advertisements that indicate preferences, limitations, or discriminations because of race, color, sex, religion, ancestry, disability, marital status, national origin and other classes, or any intention to make such preference, limitation, or discrimination.

- Using any words, phrases, sentences, descriptions, or visual aids advertisements describing real property or the area in which real property is located which indicates any preference, limitation, or discrimination because of race, color, sex/gender, religion, ancestry, disability, marital status, national origin, or other classes.

- Selectively using, placing or designing advertisements having to do with the sale, rental or financing of the purchase of real property which cause or increase discrimination by restricting or enhancing the exposure or appeal to persons of a particular race, color, sex/gender, ancestry, disability, marital status, national origin, or other classes.

When marketing services, a licensee's advertising should present no limitations on the consumer who is sought and, moreover, the licensee must be prepared to reasonably accommodate any consumer who seeks the advertised services of the industry professional. (CCR 2780.)

Social Media and On-line Advertising

In addition to the basic advertising requirements for traditional media, such as print, radio, or television, licensees are also required to disclose the same information when advertising on the Internet or on social media platforms. If a licensee owns a website or controls its content, the website must include the license identification number of the person or entity offering the advertised service or property. Similarly, for social media, licensees must disclose their license status, satisfy the first point of contact materials requirements, and generally ensure their advertising is clear and truthful.



There are also additional requirements if a licensee is advertising escrow services or originating mortgage loans. (See sections on Advertising Escrow Services and Mortgage Loan Advertising.) (Bus. & Prof. Code sections 10140.6, 10235, 10235.5, 10236.1, 10236.4, and 10240.3; CCR 2770.1, 2773, 2847.3, and 2848)

Professional Designations

An industry professional who is licensed in another profession, such as an engineer or lawyer, may include such information in their advertising as long as they are a member in good standing and/or appropriately licensed in that profession.

Similarly, real estate professionals may hold a professional designation or certification given to them through a professional or industry association. Designations that licensees have earned and have been awarded may be included in advertising, if they are valid and current. (Bus. & Prof. Code section 10176(a) and 10176(c))

Additionally, it is unlawful for a licensee to falsely claim membership in an association or to wrongfully use the logo or trademarks of an association to create the impression that the licensee is a member of an association. The term "REALTOR" and the capital "R" logo are associated with the National Association of REALTORS and are both registered trademarks. Claiming to be a REALTOR when not a member is a violation of the trademark and the Real Estate Law. It is also false, deceptive and misleading. (Bus. & Prof. Code section 10177(e))

Years of Experience

Industry professionals may want to indicate the number of years of experience they have working in real estate, but any such statement must clearly indicate the actual experience gained in those years. For example, five years of experience as an unlicensed assistant in a real estate office plus five years of experience as a licensed real estate broker does not equal 10 years of experience as a broker. While a broker may be able to advertise having 10 years of experience working in the industry, the broker's advertising is deceptive if it creates the impression that the broker has held a real estate broker's license for 10 years. (Bus. & Prof. Code section 10176(a) and 10176(c))

Advertised Inducement or Offer of Referral Fee

It is lawful for industry professionals to advertise that they will give any or all of their compensation to either party in the transaction. Rebating commission back to one of the parties, either in the form of cash or a gift, is nothing more than a reduction in the compensation charged to a consumer, and industry professionals are free to reduce their compensation.

If funds or a gift are being given to a buyer who is obtaining financing, then the buyer's lender must be made aware of the commission rebate or gift. Some lenders have regulations restricting or prohibiting payment of money or gifts to a buyer.

RESPA, or the Real Estate Settlement Procedures Act, should also be a factor when considering whether to offer a referral fee or gift to a settlement service provider. RESPA, a federal law, states that any payment made in direct exchange for a referral is prohibited. RESPA prohibits settlement service providers from giving or receiving anything of value in exchange for a referral. "Settlement service provider" is a broadly defined term that could include unlicensed, non-professional individuals.



Possible RESPA concerns aside, before paying a referral fee to an unlicensed person, make sure that person has not conducted activity requiring a real estate license. While the real estate law does not set a limit on the amount of a referral fee that may be paid, a licensee may not compensate any person for performing acts requiring real estate licensure who is not a licensed real estate broker or a real estate salesperson licensed under a responsible broker. If a licensee receives referrals from unlicensed persons, consider the following two-prong test:

1) Did the unlicensed, third party who brought the referral have an existing relationship with the buyer or seller?

2) If there was no existing relationship, how did the unlicensed person come to make the referral?

If they solicited the buyer or seller, knowing that the licensee had offered to pay compensation for each referral, then there may be a problem. Secondly, consider the number of referrals forwarded. Has there been one or have there been multiple referrals? A single referral may be indicative of "happenstance" (that is, a referral from an existing relationship), while multiple referrals may indicate, instead, deliberate targeting (e.g., a side business) to

find potential buyers and sellers, knowing that a licensee will pay a referral fee for every referral made. Remember, paying any compensation to unlicensed persons for performing acts requiring a license is unlawful.

A Final Thought

Technology is moving at a rapid rate and bringing major changes to the real estate industry. Although traditional modes of advertising have moved from the printed flyer distributed to door handles of a neighborhoods, to now being able to reach tens of thousands of potential clients with a few keystrokes, the need for professionalism remains. One must still meet the basic compliance requirements regarding disclosure and identification but, more importantly, advertisements must be clear and truthful…and of value and benefit to consumers.

Appendix

License Disclosure Requirements For Advertising (RE 559)

Mortgage Loan Advertising Submittal (RE 884)



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CALIFORNIA DEPARTMENT OF REAL ESTATE
1651 EXPOSITION BOULEVARD, SACRAMENTO, CA 95815
WWW.DRE.CA.GOV
(877) 373-4542

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