



New York State Association of REALTORS®, Inc.

Advertising Regulations: Answers to REALTORS®' frequently asked questions

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With the new advertising regulations taking effect on January 2, 2014, the NYSAR Legal Hotline has fielded numerous calls from REALTORS® with a variety of questions about compliance with the regulations. While the new regulations do not differ that much from the previous regulations and guidelines, items such as teams, logos and Internet advertising are now covered for the first time. The following are answers to REALTORS®' frequently asked questions about the advertising regulations.

General

Q: Can my broker have different advertising requirements than those found in the advertising regulations?

A: Yes, a broker may require any licensee associated with the brokerage to comply with the broker's advertising policy. The advertising policy put in place by the broker must be in compliance with the New York State Department of State, Division of Licensing Services (DOS) advertising regulations and Article 12 of the NAR Code of Ethics. There is nothing prohibiting a broker from placing more stringent requirements for advertisements by his or her licensees. For example, a broker may require all advertisements to follow a certain template or require the name of the brokerage to be a certain size or in a specific position.

Q: Can the name of non-licensed individuals or personal assistants appear in my advertisements?

A: Yes, the names of non-licensed individuals or personal assistants may appear in an advertisement so long as it is clear and conspicuous which individuals are real estate licensees and which ones are not. Brokers should be wary of assigning titles to non-licensees that make it appear the non-licensed individual is licensed or can perform any licensed activities.

Q: Can I include other information in my advertisements such as an email address, website address or cell number?

A: Yes, telephone numbers other than that of the brokerage may be used in an advertisement, provided that the advertisement clearly identifies the type of such other telephone number as desk, home, cell phone or other type. This does not negate the requirement under 175.25(c)(1) that the brokerage address or office phone number appear in every advertisement. Other information such as

an email address, website address and/or cell phone number is permitted in addition to the information required under the advertising regulations.

Q: I am a broker and my brokerage is licensed under the name of my LLC. The name of my LLC is "123 Main Street, LLC," but I operate my brokerage as "Spindrift Realty" under a DBA. I was told that the new advertising regulations require me to advertise only under "123 Main Street, LLC." Why did this change?

A: Much like the use of nicknames, this has always been a requirement. Brokerages are only permitted to advertise under the name that appears on the broker's license. If a broker has a corporation or LLC and does not want to operate under that name, they may file for a DBA. Once the DBA is granted a broker's license under the DBA name can be obtained. There is no grace period for brokers electing to do this.

For sale signs

Q: Does the address or phone number of the brokerage need to be on a for sale sign?

A: No, it does not. Generally, advertisements need to contain the name of the brokerage and the brokerage address or office telephone number. For sale signs are one of the exceptions to the general rule. The advertising regulations in section d(5) reads, "Notwithstanding subdivision (c)(1) of this section, unless otherwise prohibited by local law, any property listed through a real estate broker must be advertised as such, and any signage placed upon such property soliciting the sale or lease of the property must identify the representative broker or brokerage." Of course, there is nothing prohibiting a brokerage from including additional information on a for sale sign.

Q: If I use my name on a sign rider, do I have to include my license type?

A: This issue has been discussed with DOS. In those discussions, DOS has stated that the license type is not required to be placed on a for sale or a for sale sign rider. However, if the licensee includes any other designations such as GRI or SRES, then the license type needs to be included. A formal opinion has been requested on this issue and is currently pending with the DOS.

Q: Does an "open house" or directional sign need to comply with the advertising regulations?

A: No, so long as the sign contains no identifying information as to the licensee or brokerage. In the event the brokerage name appears on the sign, it must be the full licensed name of the brokerage. If the licensee's name appears on the sign, so must the name of the brokerage. The licensee is required to use their full licensed name as well.

Business cards

Q: What needs to be on my business card?

A: All business cards must contain the business address of the licensee and the name of the real estate broker (if an individual solo broker) or real estate brokerage (if a corporate brokerage) with

whom the associate real estate broker or real estate salesperson is associated. All business cards must also contain the office telephone number for the associate real estate broker, real estate salesperson or team.

Q: What is the “business address” that needs to be on my business cards?

A: Business cards must contain the “business address” of the office where the associate real estate broker or real estate salesperson is associated. According to the DOS, “business address” is the address of the broker’s office that appears on your license. Other licensed addresses of the broker may be used in addition to the required “business address.” Teams utilizing business cards must fully comply with these regulations.

Q: On my business card, can I indicate what phone number I prefer?

A: Yes, there is nothing in the regulations prohibiting such a practice so long as the licensee’s assigned office number is on the card. Of course, the other phone numbers include a description of the type of phone number (cell, office, etc), but if the licensee wants to bring attention to one of the phone numbers, they may do so. Licensees may have the phone number appear in a different color, font, size or placement than the other telephone number(s) in the advertisement.

Internet

Q: Does my domain name need to be my licensed name?

A: No, any domain name can be used that is not misleading or dishonest. Obtaining a domain name that is the name of another brokerage or licensee (or a common misspelling of the same) is prohibited, and considered dishonest and misleading.

Q: Do my social networking sites need to comply with the advertising regulations?

A: Yes, to the extent by which the user has dominion and control over what is displayed. If a licensee has the ability to comply with the advertising regulations, they should make every effort to do so. This can be done by entering the appropriate text or by compliance using a photograph uploaded with the required information so long as it complies with the terms of the social networking site.

Nicknames

Q: I have been in the real estate business for more than 30 years and have always been known as Jen Smith. Why do the new advertising regulations require me to advertise myself as Jennifer “Jen” Smith?

A: Contrary to what some licensees believe, this is not a new requirement. The current text of the “new” regulation was taken from the “Advertising Guidelines” published by the DOS in 1994. Under the 1994 guidelines, “Advertisements should state the exact name under which a license was issued. It is possible that the use of advertising of any other name might tend to mislead the public and not correctly identify the true advertiser ... Business names should be listed exactly as they appear on the

broker license.” As can be seen, the 1994 guidelines are very clear on the requirement that a licensee use their name as it appears on their license. Under the new advertising regulations, section c(3) requires a licensee to “...advertise using the name under which said real estate broker, associate real estate broker or real estate salesperson is licensed with the Department of State. A nickname may be used in an advertisement provided that the full-licensed name is listed clearly and conspicuously.” As can be seen, there is no change in this requirement and licensees should have been aware that they were not in compliance all along.

Q: I am a licensed real estate salesperson and have been operating under my nickname for more than 20 years. Can I file for a DBA as my nickname and then be licensed under my DBA instead of my full name?

A: No. Only individuals may be licensed as a real estate associate broker or real estate salesperson. Licensees are prohibited from operating under a DBA instead of their licensed name.

Teams

Q: If I use a team logo, do I need to include my broker’s logo?

A: Yes. A real estate team, associate real estate broker or real estate salesperson may use a logo different from that of the real estate brokerage with whom they are associated, provided that the name and logo of the real estate broker or real estate brokerage is also printed in the advertisement. If the broker does not have a logo, then the real estate team, associate real estate broker or real estate salesperson’s logo may be used.

Q: Do I need to include the broker’s address or phone number in team advertisements?

A: Yes. A team is not a licensed entity and is prohibited from acting as such. A group of licensees associated with the same broker may choose to operate as a team. That team is permitted to advertise under the brokerage and must comply with all the advertising requirements. At a minimum (and depending on the type of advertisement) the brokerage name and address or phone number must appear in the advertisement. Teams or licensees attempting to minimize or camouflage the brokerage’s name and address or phone number may be subject to discipline by the DOS.

Q: I was told that a team can occupy a licensed branch office exclusively. Is this true?

A: In 2013, the DOS permitted a brokerage to have a team occupy a branch office. While the branch office may only contain members of the team, the branch office is still subject to the same requirements as any other branch office including compliance with the advertising regulations. Furthermore, 19 NYCRR §175.20(a) states that a branch office shall not be conducted, maintained and operated under an arrangement whereby a team, licensee or employee of the broker shall pay, or be responsible for, any expense or obligation created or incurred in its conduct, maintenance or operation, or under any other arrangement, the purpose, intent or effect of which shall permit a team, licensee salesperson or employee to carry on the business of real estate broker for his own benefit, directly, or

indirectly, in whole or in part. (This author added the term “team” to the text of the regulation as the DOS indicated the regulation applied to teams as well).

License type

Q: I am the broker and owner of my brokerage; can I refer to myself as broker/owner in my advertisements?

A: No, the use of the title “broker” is expressly prohibited in the advertising regulations. Advertisements shall correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. Licensees may abbreviate the type of license held, provided that such abbreviation is not misleading. By adding the words “real estate,” the individual could use “real estate broker/owner” and be in compliance with the advertising regulations.

Q: Do I have to use the term “licensed” when indicating my license type (licensed real estate salesperson)?

A: No. NYSAR has been in discussions with the DOS concerning this issue. In informal discussions, the DOS agreed that the term “licensed” is not required as an individual could not be a real estate broker, associate broker or salesperson unless they are licensed. A formal opinion has been requested on this issue and is currently pending with the DOS.

Q: I have always advertised my license status as a “licensed real estate agent.” If I am an agent, why can’t I use this title?

A: Advertisements shall correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. Licensees may abbreviate the type of license held, provided that such abbreviation is not misleading. The use of the titles “sales associate,” “licensed sales agent” or simply “broker” is prohibited. Real estate brokers, associate real estate brokers or real estate salespersons who have additional titles or designations are permitted to advertise such titles or designations.

For more information on the advertising regulations, please visit the Advertising Regulations section in the Legal section of NYSAR.com for webinars, articles and other information.

Editor’s note: *Additional in-depth articles about the advertising regulations are also available in the July/August and November/December 2013 issues of New York State REALTOR®, which can also be found online at NYSAR.com.*