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Advertising Rules

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Introduction

One of the most problematic issues over the last 10 years has been the advertising published by license holders across Texas. This course will cover the provisions of the Texas Real Estate License Act and the rules of the Texas Real Estate Commission pertaining to advertising with an eye towards keeping license holders in compliance with these important rules and regulations. We will also review Multiple Listing Service rules and the Realtor® Code of ethics provisions pertaining to advertising.

Let's start with those provisions of the Texas Real Estate License Act that address advertising.

TRELA Sec. 1101.156. RULES RESTRICTING ADVERTISING.

(a) The commission may not adopt a rule restricting advertising or competitive bidding by a person regulated by the commission except to prohibit a false, misleading, or deceptive practice by the person.

(b) The commission may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement used by the person;
- (4) restricts the person's advertisement under an assumed or trade name that is authorized by a law of this state and registered with the commission; or
- (5) requires the term "broker," "agent," or a similar designation or term, a reference to the commission, or the person's license number to be included in the person's advertisement.

Notice this section deals with rules that the Texas Real Estate Commission may not have!

TRELA Sec. 1101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE.

(b) The commission may suspend or revoke a license issued under this chapter or take other disciplinary action authorized by this chapter if the license holder, while engaged in real estate brokerage:

- (1) acts negligently or incompetently;
- (2) engages in conduct that is dishonest or in bad faith or that demonstrates untrustworthiness;
- (3) makes a material misrepresentation to a potential buyer concerning a significant defect, including a latent structural defect, known to the license holder that would be a significant factor to a reasonable and prudent buyer in making a decision to purchase real property;
- (5) makes a false promise that is likely to influence a person to enter into an agreement when the license holder is unable or does not intend to keep the promise;
- (6) pursues a continued and flagrant course of misrepresentation or makes false promises through an agent or sales agent, through advertising, or otherwise;
- (14) solicits, sells, or offers for sale real property by means of a lottery;
- (15) solicits, sells, or offers for sale real property by means of a deceptive practice;
- (17) guarantees or authorizes or permits a person to guarantee that future profits will result from a resale of real property;
- (18) places a sign on real property offering the real property for sale or lease without obtaining the written consent of the owner of the real property or the owner's authorized agent;
- (19) offers to sell or lease real property without the knowledge and consent of the owner of the real property or the owner's authorized agent;
- (20) offers to sell or lease real property on terms other than those authorized by the owner of the real property or the owner's authorized agent;

- (23) publishes or causes to be published an advertisement that:
- (A) misleads or is likely to deceive the public;
 - (B) tends to create a misleading impression;
 - (C) implies that a sales agent is responsible for the operation of the broker's real estate brokerage business; or
 - (D) fails to include the name of the broker for whom the license holder acts, which name may be the licensed name, assumed name, or trade name of the broker as authorized by a law of this state and registered with the commission;

TRELA Sec. 1101.702. AMOUNT OF PENALTY.

- (a) The amount of an administrative penalty may not exceed \$5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

Texas Real Estate Commission Rules

TREC Rules §535.2 Broker Responsibility

(g) A broker is responsible to ensure that a sponsored sales agent's advertising complies with §535.154 of this title.

(i) A broker who sponsors sales agents or is a designated broker for a business entity shall maintain, on a current basis, written policies and procedures to ensure that:

(6) Each sponsored sales agent complies with the Commission's advertising rules.

(n) The compilation and distribution of information relating to rental vacancies or property for sale, purchase, rent, or lease is activity for which a real estate license is required if payment of any fee or other consideration received by the person who compiles and distributes the information is contingent upon the sale, purchase, rental, or lease of the property. An advance fee is a contingent fee if the fee must be returned if the property is not sold, purchased, rented, or leased.

(o) A person must be licensed as a broker or sales agent if, for compensation, the person:

- (1) advertises for others regarding the sale, purchase, rent, or lease of real property;
- (2) accepts inquiries received in response to such advertisements; and
- (3) refers the inquiry to the owner of the property.

TREC Rules §535.154 Advertising

(a) Definitions. For the purposes of this section:

(1) "Advertisement" has the meaning assigned by §535.155.

(2) "Alternate name" (commonly known as an alias) means a name used by an individual license holder other than the name shown on the license issued by the Commission, such as a middle name, maiden name, or nickname. It does not include a common derivative of a name, such as Kim for Kimberly or Bill for William, which is considered the same as the name shown on the license.

(3) "Associated broker" means a broker who associates with and gets paid through another broker under a relationship that is intended to be a continuous relationship, including but not limited to, an employment or ongoing independent contractor relationship.

(4) "Assumed business name" (commonly known as a DBA or trade name) means any name used in business by a broker that meets the requirements of subsection (d), other

than the name shown on the broker's license issued by the Commission, a team name, or an alternate name.

(5) "Team name" means a name used by a group of one or more license holders sponsored by or associated with the same broker that performs real estate activities under an exclusive collective name other than the broker's licensed name or assumed business name.

(b) Alternate names.

(1) Before a license holder starts using an alternate name in an advertisement, the license holder must register the name with the Commission on a form approved by the Commission.

(2) The Commission may request supporting documentation evidencing the legal authority to use the alternate name if the last name submitted is different from the last name shown on the license issued by the Commission.

(3) A license holder must notify the Commission, and their sponsoring broker, not later than the 10th day after the date the license holder stops using an alternate name.

(c) Team names:

(1) A team name may not include any terms that could mislead the public to believe think that the team is offering brokerage services independent from its sponsoring broker.

(2) A team name must end with the word "team" or "group".

(3) Before an associated broker or a sales agent sponsored by a broker starts using a team name in an advertisement, the broker must register the name with the Commission on a form approved by the Commission.

(4) A broker must notify the Commission in writing not later than the 10th day after the date the associated broker or a sales agent sponsored by the broker stops using a team name.

(d) Assumed business names.

(1) Before a broker, associated broker or a sales agent sponsored by a broker starts using an assumed business name of the broker in an advertisement, the broker must:

(A) register the name with the Commission on a form approved by the Commission; and

(B) provide written evidence of legal authority to use the assumed business name in Texas, such as registration of the name with the Secretary of State or county clerk's office.

(2) A broker must notify the Commission in writing not later than the 10th day after the date the broker stops using an assumed business name.

Let's Talk Team Names – Sales Agent John Smith has a team. Remember that the broker's name must always be included.

What you can't use:

John Smith Properties
John Smith and Associates
John Smith Company
John Smith Realty
John Smith Real Estate
John Smith Homes
John Smith Services
John Smith, Realtor®
John Smith, Owner
John Smith, CEO
John Smith, President
John Smith, Partner

What you may use:

John Smith Team or Group
John Smith Properties Team or Group
John Smith Real Estate Team or Group
John Smith Homes Team or Group
John Smith Services Team or Group
John Smith, Realtor® Team or Group

§535.155, Advertisements

(a) Each advertisement must include the following in a readily noticeable location in the advertisement:

- (1) the name of the license holder or team placing the advertisement; and
- (2) the broker's name in at least half the size of the largest contact information for any sales agent, associated broker, or team name contained in the advertisement.

(b) For the purposes of this section:

(1) "Advertisement" is any form of communication by or on behalf of a license holder designed to attract the public to use real estate brokerage services and includes, but is not limited to, all publications, brochures, radio or television broadcasts, all electronic media including email, text messages, social media, the Internet, business stationery, business cards, displays, signs and billboards. Advertisement does not include a communication from a license holder to the license holder's current client.

(2) Associated broker has the meaning assigned by §535.154.

(3) "Broker's name" means:

- (A) the broker's name as shown on a license issued by the Commission;
- (B) if an individual, an alternate name registered with the Commission; or
- (C) any assumed business name that meets the requirements of §535.154.

(4) "Contact Information" means any information that can be used to contact a license holder featured in the advertisement, including a name, phone number, email address, website address, social media handle, scan code or other similar information.

(5) "Party" means a prospective buyer, seller, landlord, or tenant, or an authorized legal representative of a buyer, seller, landlord, or tenant, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a license holder who represents a party.

(6) "Team name" has the meaning assigned by §535.154.

(c) For an advertisement on social media or by text, the information required by this section may be located on a separate page or on the account user profile page of the license holder, if the separate page or account user profile is:

(1) readily accessible by a direct link from the social media or text; and

(2) readily noticeable on the separate page or in the account user profile.

(d) For purposes of this section and §1101.652(b)(23) of the Act, an advertisement that misleads or is likely to deceive the public, tends to create a misleading impression, or implies that a sales agent is responsible for the operation of the broker's real estate brokerage business includes, but is not limited to, any advertisement:

(1) that is inaccurate in any material fact or representation;

(2) that does not comply with this section;

(3) that identifies a sales agent as a broker;

(4) that uses a title, such as owner, president, CEO, COO, or other similar title, email or website address that implies a sales agent is responsible for the operations of a brokerage;

(5) that contains a team name with terms that imply that the team is offering brokerage services independent from its sponsoring broker, including, but not limited to, "realty", "brokerage", "company", and "associates";

(6) that contains the name of a sales agent that is not the name as shown on the sales agent's license issued by the Commission or an alternate name registered with the Commission;

(7) that contains the name of a sales agent whose name is, in whole or in part, used in a broker's name and that implies that the sales agent is responsible for the operation of the brokerage;

(8) that causes a member of the public to believe that a person not licensed to conduct real estate brokerage is engaged in real estate brokerage;

(9) that contains the name or likeness of an unlicensed person that does not clearly disclose that the person does not hold a license;

(10) that creates confusion regarding the permitted use of a property;

(11) about the value of a property, unless it is based on an appraisal that is disclosed and readily available upon request by a party or it is given in compliance with §535.17;

(12) that implies the person making the advertisement was involved in a transaction regarding a property when the person had no such role;

- (13) about a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed in writing to waive disclosure;
- (14) offering a listed property that is not discontinued within 10 days after the listing agreement is no longer in effect;
- (15) about a property 10 days or more after the closing of a transaction unless the current status of the property is included in the advertisement;
- (16) that offers to rebate a portion of a license holder's compensation to a party if the advertisement does not disclose that payment of the rebate is subject to the consent of the party the license holder represents in the transaction;
- (17) that offers to rebate a portion of a license holder's commission contingent upon a party's use of a specified service provider, or subject to approval by a third party such as a lender, unless the advertisement also contains a disclosure that payment of the rebate is subject to restrictions;
- (18) that offers or promotes the use of a real estate service provider other than the license holder and the license holder expects to receive compensation if a party uses those services, if the advertisement does not contain a disclosure that the license holder may receive compensation from the service provider;
- (19) that ranks the license holder or another service provider unless the ranking is based on objective criteria disclosed in the advertisement; or
- (20) that states or implies that the license holder teaches or offers Commission approved courses in conjunction with an approved school or other approved organization unless the license holder is approved by the Commission to teach or offer the courses.

Multiple Listing Service of the Houston Realtors® Information Service – Rules and Regulations

1. Listings and Types of Properties: Listings of residential properties must be broker-loaded or filed (delivered or postmarked) with the Multiple Listing Service within three (3) days after the commencement of the term of the listing contract and all necessary signatures of seller(s) or lessor(s) have been obtained.

1.2 Listing Details: Any listing including any addendum and profile sheet, when filed with Multiple by the Participant, shall be complete in every detail and contain the entire agreement between the parties. Participant shall use reasonable care to ensure the accuracy of such submitted information and shall be responsible for submitting listing information, correcting and updating all information in accordance with MLS rules. Participant shall assure that any media, including photographs, floor plans, documents or other information pertaining to listed properties that are included in the listing information for which Participant is the designated broker, is included in the MLS System with the written consent of the appropriate party.

1.3 Exempted Listings: If the seller or lessor, unsolicited, refuses to permit the listing to be disseminated by Multiple, the listing Participant may then take the listing (office exclusive), but it shall not be filed with Multiple. If the seller refuses to permit the listing to be disseminated by the MLS, the listing broker shall submit to the MLS within 3 days (with no exceptions for weekends, holidays and postal holidays) an approved certification signed by the seller indicating that the seller does not authorize the listing to be disseminated by the MLS during the specified waiver period.

1.4 Change of Price/Status of Listing: Any change in listed price or other change in a listing contract shall be made only when authorized in writing by the seller or lessor and shall be broker-loaded or filed with Multiple within three (3) days after notice is received by the listing participant; provided, however, the listed price may only be changed while the listing is in Active status. Each change in price must be authorized in writing by the seller and specify the date of the change and the new list price. Once an offer has been accepted the listed price should not be changed unless the contract has been terminated and the listing status is changed back to Active.

1.5 Withdrawal, Termination or Expiration: Listings may be terminated or withdrawn from Multiple by the listing participant before expiration date of the listing contract by broker-load or by submitting to Multiple a copy of the agreement between the seller or lessor and participant which authorizes such termination or withdrawal. A listing cannot be withdrawn, terminated or reported as expired to avoid reporting sales price and closing information.

Sellers or lessors do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller(s) or lessor(s) can document that his exclusive relationship with the listing broker has been terminated, the Multiple Listing Service may remove the listing at the request of the seller or lessor.

1.22 False or Misleading: Submission of false or misleading information to MLS shall be a violation of these Rules and shall result in a fine as provided herein.

1.23 Major Areas: A listed property may not be entered in more than one major area.

1.25 Submission of Media (Images, Virtual Tours, Hyperlinks, and Documents): All media files and hyperlinks submitted to multiple shall contain or link to information pertinent to the listed property only and shall comply with the requirements below. Media previously submitted by a Participant may not be used by other Participants on subsequent listings without written authorization from the copyright owner (The copyright owner is the creator of the original work unless there is a written agreement by which the creator assigns the copyright to another person).

1.25.1 – Digital Images (Pictures): Digital images and photo description text shall not contain legible contact information such as names, phone numbers, email addresses or web site addresses, including the use of embedded, overlaid, or digitally stamped information. Digital images shall not contain digitally enhanced modifications that alter or misrepresent the condition or appearance of the listed property's structure or grounds (e.g. adding a swimming pool or landscaping, changing the color of a wall). Digital images may include the use of virtual staging which is limited to the addition of furnishings and wall décor that would otherwise be considered personal property and not conveyed in the sale of the property. Participants shall clearly indicate in the Photo Description the image has been virtually staged. Remarks related to the transaction such as available financing, cash back at closing, bonuses, upgrade incentives, upgrade allowances, repair and decorating allowances, etc. shall not be entered in the photo description.

(a) Single Family, Townhouse-Condominium, High Rise, Multi-Family and Rentals (i) At least six (6) unique digital images of each property or its grounds listed in a property class defined in 1.25.1 (a) are required and shall be participant loaded into multiple within 10 days of the list date unless written documentation requesting a photo not be submitted is signed by the Seller and submitted to multiple. An exception requiring only three (3) unique digital images is allowed if the listing is "To Be Built/Under Construction" and written documentation requesting three (3) photos be submitted is signed by the Seller and submitted to multiple.

(ii) An exception requiring only three (3) unique digital images is allowed if the listing is "To Be Built/Under Construction" and written documentation requesting three (3) photos be submitted is signed by the Seller and submitted to multiple. At least one (1) of the required digital images must be an actual photo of the listed property. Digital images such as floor plans, artist renderings or elevation drawings that are not actual photographs of the listed property are allowed but shall not count as the one required photo. Digital images of similar or like construction properties may only be submitted if the listing is "To Be Built/Under Construction" and each image must be appropriately identified at the time of upload to the MLS the image is of another, similarly constructed property. (iii) In addition to the required photos defined above, subscribers may load additional digital images which may consist of photos, floor plans, artist renderings or elevation drawings of the listed property or its grounds.

2.7 Advertising of Listing Filed with Multiple: Advertising of any listing by a Participant, other than the listing Participant, is permissible only with the consent of the listing Participant.

2.9 Leaving of Business Cards: A salesperson showing a property shall not leave a business card unless requested by the seller or lessor or listing Participant.

4.1 "For Sale" or "For Lease" Signs: Only the "For Sale" or "For Lease" signs of the listing broker may be placed on a property.

4.2 "Sold" Signs: Prior to closing, only the "Sold" sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

Code of Ethics and Standards of Practice of the National Association of Realtors®

Article 12

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.

- Standard of Practice 12-1

Realtors® may use the term “free” and similar terms in their advertising and in other representations provided that all terms governing availability of the offered product or service are clearly disclosed at the same time.

- Standard of Practice 12-2

Realtors® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the Realtor® to obtain a benefit from a third party is clearly disclosed at the same time.

- Standard of Practice 12-3

The offering of premiums, prizes, merchandise discounts or other inducements to list, sell, purchase, or lease is not, in itself, unethical even if receipt of the benefit is contingent on listing, selling, purchasing, or leasing through the Realtor® making the offer. However, Realtors® must exercise care and candor in any such advertising or other public or private representations so that any party interested in receiving or otherwise benefiting from the Realtor®’s offer will have clear, thorough, advance understanding of all the terms and conditions of the offer. The offering of any inducements to do business is subject to the limitations and restrictions of state law and the ethical obligations established by any applicable Standard of Practice.

- Standard of Practice 12-4

Realtors® shall not offer for sale/lease or advertise property without authority. When acting as listing brokers or as subagents, Realtors® shall not quote a price different from that agreed upon with the seller/ landlord.

- Standard of Practice 12-5

Realtors® shall not advertise nor permit any person employed by or affiliated with them to advertise real estate services or listed property in any medium without disclosing the name of

that Realtor®'s firm in a reasonable and readily apparent manner either in the advertisement or in electronic advertising via a link to a display with all required disclosures.

- Standard of Practice 12-6

Realtors®, when advertising unlisted real property for sale/lease in which they have an ownership interest, shall disclose their status as both owners/landlords and as Realtors® or real estate licensees.

- Standard of Practice 12-7

Only Realtors® who participated in the transaction as the listing broker or cooperating broker (selling broker) may claim to have “sold” the property. Prior to closing, a cooperating broker may post a “sold” sign only with the consent of the listing broker.

- Standard of Practice 12-8

The obligation to present a true picture in representations to the public includes information presented, provided, or displayed on Realtors®' websites. Realtors® shall use reasonable efforts to ensure that information on their websites is current. When it becomes apparent that information on a Realtor®'s website is no longer current or accurate, Realtors® shall promptly take corrective action.

- Standard of Practice 12-9

Realtor® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

- Standard of Practice 12-10

Realtors®' obligation to present a true picture in their advertising and representations to the public includes Internet content posted, 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) to otherwise mislead consumers.

- Standard of Practice 12-11

Realtors® intending to share or sell consumer information gathered via the Internet shall disclose that possibility in a reasonable and readily apparent manner.

- Standard of Practice 12-12

Realtors® shall not:

- 1) use URLs or domain names that present less than a true picture, or
- 2) register URLs or domain names which, if used, would present less than a true picture.

- Standard of Practice 12-13

The obligation to present a true picture in advertising, marketing, and representations allows Realtors® to use and display only professional designations, certifications, and other credentials to which they are legitimately entitled.

Article 15

Realtors® shall not knowingly or recklessly make false or misleading statements about other real estate professionals, their businesses, or their business practices.

Article 16 Realtors® shall not engage in any practice or take any action inconsistent with exclusive representation or exclusive brokerage relationship agreements that other Realtors® have with clients.

- Standard of Practice 16-2

Article 16 does not preclude Realtors® from making general announcements to prospects describing their services and the terms of their availability even though some recipients may have entered into agency agreements or other exclusive relationships with another Realtor®. A general telephone canvass, general mailing or distribution addressed to all prospects in a given geographical area or in a given profession, business, club, or organization, or other classification or group is deemed “general” for purposes of this standard. Article 16 is intended to recognize as unethical two basic types of solicitations: First, telephone or personal solicitations of property owners who have been identified by a real estate sign, multiple listing compilation, or other information service as having exclusively listed their property with another Realtor® and Second, mail or other forms of written solicitations of prospects whose properties are exclusively listed with another Realtor® when such solicitations are not part of a general mailing but are directed specifically to property owners identified through compilations of current listings, “for sale” or “for rent” signs, or other sources of information required by Article 3 and Multiple Listing Service rules to be made available to other Realtors® under offers of subagency or cooperation.

TREC FAQs:

I am a sales agent. Can TREC review my advertising and advise me whether my advertising complies with TREC Rules?

No. TREC does not review a sales agent's advertising. TREC will only discuss advertising questions with a broker directly. Your sponsoring broker should review your advertising because your sponsoring broker is responsible for ensuring that your advertising complies with TREC's advertising rules, and both you and your sponsoring broker can be disciplined if your advertising violates TREC rules. [See §§535.2(g) and 535.154; TRELA 1101.652(b)(23)]. Your broker must maintain, on a current basis, written policies and procedures to ensure that each sponsored sales agent complies with the Commission's advertising rules. [See §535.2(i)(6)].

A residential service company is paying me a fee to advertise for it. Do I have to disclose that fee to my client and use a TREC form?

Yes and yes. You must also provide the client with the TREC Disclosure of Relationship with Residential Service Company form (RSC-2).

When can an agent say that they "sold" a property in an advertisement?

Any agent who worked with the seller or the buyer in a transaction that resulted in the sale of a property may correctly state in an advertisement that they "sold" the property. If the license holder did not participate in that specific transaction, he cannot state or imply that his actions resulted in the sale of that property. An example of a misleading advertisement of this nature would be if a license holder sent out "Just Sold" postcards with her contact information and a picture of a recently sold property that she did not help to sell. She didn't state that she sold it but an average person reading the card could surely and reasonably imply an erroneous claim of involvement. Another potential example of a misleading advertisement is a license holder who included a list of "Recently Sold Homes" in his advertisement that included many properties where he had no role in the transaction, but he failed to make it clear in the ad which – if any – of those transactions he was involved in. Under Texas law, a license holder may not "create a misleading impression" in their advertisement. A broker must review all ads to ensure this result is avoided.

Is a license holder required to put their license number on a sign or other advertising?

No.

May a license holder who is a rental locator advertise that they will pay a prospective tenant a portion of their fee received from an apartment complex if the tenant uses the locator's services?

Yes, as long as the ad complies with Rule 535.154(m), which requires the consent of the party the license holder represents in a transaction. When a rental locator represents an apartment complex, the locator needs the consent of the apartment complex. When the rental locator represents a tenant and not an apartment complex, as demonstrated by a written representation agreement or other evidence of representation, the locator is not required to obtain the consent of the apartment complex because the complex is not his client. Regardless of representation, however, it is misleading advertising to advertise a rebate for an apartment complex that the locator knows has a "no rebate" policy.

Can I advertise a service provider such as an inspector, moving company, or repair contractor on my website?

Yes, but if you offer, recommend, or promote the use of a service provider and expect to receive compensation from the service provider when a party uses the service, the ad must disclose that you may receive the compensation. [Rule 535.154(n)] You may advertise an inspector's services, however, an inspector may not pay a fee or other valuable consideration for (1) a referral, (2) inclusion on a list of inspectors or preferred providers, or a similar arrangement; or (3) inclusion on a list of inspections contingent on other financial agreements. [Rule 535.220(e)(3)] Also, acceptance of a fee from a service provider may violate the Federal Real Estate Settlement Procedures Act (RESPA), which prohibits certain referral fees and kick-backs.

I only represent buyers. Can I advertise that I will rebate a part of my compensation to the buyer?

Yes, as long as the advertisement complies with Rule 535.154(m) regarding any restrictions that might apply. However, a rebate to a buyer from a license holder may be subject to restrictions by the buyer's lender. You should contact your broker or private attorney to find out how you should notify and obtain the consent of the buyer's lender to address any impact the rebate may have on the determination regarding the buyer's creditworthiness.

If I represent the seller, can I advertise that I will rebate part of my compensation to the buyer?

Yes, but the ad must disclose that payment of the rebate is subject to the consent of the seller and if the rebate is contingent upon certain restrictions, such as the use of a particular service provider, the ad must contain a disclosure that payment of the rebate is subject to restrictions.

[Rule 535.154(m)] A sales agent must also have their sponsoring broker's authorization to offer a rebate. Also, see the answer to the next question regarding notice to the buyer's lender.

I am a sales agent, Sally White. I am sponsored by a broker but want to use an assumed name for my advertisements. Can I use "Sally's Spectacular Properties" or "White Real Estate" for my business name on my advertising?

You cannot use either company name because each implies that Sally, a sales agent, is in charge. An advertisement cannot in any way imply that a sales agent is the person responsible for the operation of a real estate brokerage. [Rule 535.154(g)]. A sales agent may use her name with the term "Team" or "Group," so long as the advertisement also includes the broker's name, and so long as the broker has registered the team or group name with the Commission.

Similarly, you can use the name "Spectacular Properties" if your broker sends written notice to the Commission within 30 days of the start of the use of that name [Rule 535.154(c) and (e)] and you add additional designations such as "agent" to the advertisement to readily identify that the advertisement was placed by a sales agent. [Rule 535.154(f)] For example, the advertisement might state "call 123-1234, agent, Spectacular Properties" or "call Sally at 123-1234, agent, Spectacular Properties."

I am a real estate broker, can I use the term "REALTOR" on my business card?

No, unless you have the legal right to use this copyrighted trade name. See Rule 535.154(i). Check with your local board to find out if membership in the board will grant you the right to use the term "REALTOR."

Are there any restrictions on the placement of a license holder's signs?

Yes. TREC may suspend or revoke a license if the license holder places a sign on a property offering it for lease or rental without the written permission of the owner or the owner's authorized agent. [TRELA §1101.652(b)(18)]. Also, although TREC does not regulate where a license holder places a sign, a license holder is responsible for compliance with any rules, restrictions, or regulations covering placement of a sign in their local area. Placement of signs in violation of city ordinance could be considered an act of negligence or incompetence that authorizes disciplinary action against the license holder as well as subject the license holder and possibly even their principal to enforcement actions by the appropriate authorities. [TRELA §1101.652(b)(1)] Typically, sign ordinances prohibit placing a sign on a utility pole, traffic signal box, or in a road median.

Are signs permitted which display the word "broker" or "agent?"

Yes. Although this is no longer mandatory, it may still be placed on a sign.

What is the required information that must be provided in advertisements such as signs, email and business cards?

All advertisements must comply with TRELA §1101.652(b)(23) and Rule 535.154.

What is considered an advertisement?

Under Rule 535.154(a), an advertisement is defined as a “written or oral statement or communication which induces or attempts to induce” a person to use the services of a real estate license holder. It includes, but is not limited to, all publications, radio or television, all electronic media including emails, texts, websites, blogs and tweets, business cards, letterhead, signs, and billboards. Once a person has agreed to use the services of a license holder, subsequent communication from the license holder is not considered an advertisement.



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Continuing Education for Texas Real Estate Professionals

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