

**Resource Guide for  
Presenting a True Picture  
In Your Advertising  
and  
Other Public Representations**



***This guide is brought to you by the CCAR Professional Standards Committee to assist you with your advertisement to sell or lease real property. It includes:***

- ❖ *NAR Code of Ethics (Article 12)***
- ❖ *The Texas Real Estate License Act (TRELA) Section 15***
- ❖ *TREC Regulations (535.154)***
- ❖ *Texas Deceptive Trade Practice Act***
- ❖ *Federal Fair Housing Laws***
- ❖ *Truth in Lending Act – Regulation Z***
- ❖ *NTREIS (Section 15-18)***

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# Article 12

## Present a True Picture

### In Your Advertising and Other Public Representations

REALTORS® shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS® shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising.

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- ❖ In marketing properties, REALTORS® use advertising to inform the public about listings and to induce interest in them. REALTORS® are obligated to present a “true picture” in their advertising and in all representations to the public. A “true picture” is truthful, accurate advertising, and nothing less. Descriptions that go beyond “puffing” may mislead the public. Statistics indicating a REALTOR®’s sales volume and comparisons with other firms can be impressive, but if they are inaccurate, untrue, or misleading, their use injures the public and violates Article 12.
- ❖ REALTORS® must always disclose their status as real estate professionals in their advertisements. This may be accomplished by including the terms “REALTOR®,” “REALTORS®,” or “REALTOR-ASSOCIATE®,” or by disclosing their status as a licensed broker, appraiser, property manager, or other real estate professional.
- ❖ In advertising listed property, REALTORS® must also disclose the name of their firm so that the public will be aware that they are dealing with the property owner’s agent. Further, the REALTOR® must ensure that all brokers and salespeople affiliated with the firm include the firm’s name in their advertisements of listed properties.
- ❖ When advertising unlisted property in which the REALTOR® has any ownership interest, the advertisement must disclose the interest and the existence of Board membership or real estate licensure.
- ❖ Services and products should be described as “free” or “free of charge” only when all terms governing availability are clearly disclosed at the same time as when the “free” product or service is offered. (Refer to Standard of Practice 12-1 and Case Interpretations #12-7 and #12-10)

#### **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.  
(Amended 1/97)*

**Case #12-7: REALTOR® Advertising Free Market Analysis (Reaffirmed Case #19-9 May, 1988. Transferred to Article 12 November 1994. Revised November 2001.)**

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also distributed certificates reading, "This will entitle the bearer of this certificate to one (1) FREE Market Analysis with no obligation to bearer." The certificate included the name of REALTOR® A and his firm.

A property owner complained about "being the victim of a come-on scheme" to solicit the listing of his property which the Grievance Committee referred for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing the property owner testified he had called REALTOR® A to have him prepare a market analysis of his residential property, ". . . with no obligation. . ." as claimed in REALTOR® A's ads. However, the property owner said that when REALTOR® A came to his home, he explained that he would be glad to provide the market analysis but said, "I presume you understand that when we provide this service, we also expect that if you list your property, you will permit us to serve you." The property owner testified that REALTOR® A did not press the matter at the time and did provide a market analysis. The property owner told the panel that for the next three weeks REALTOR® A or one of his representatives called "practically every single day" soliciting the listing of his home. The property owner testified that on several occasions, someone from REALTOR® A's office reminded him that REALTOR® A had provided a "valuable free service and we feel that you owe us the listing of the property."

REALTOR® A responded that he had provided the "free market analysis" as represented in his advertising, and had provided it ". . . with no obligation." He stated that he had neither asked for nor received a fee for the market analysis. He could not understand why he was required to appear before a Hearing Panel in connection with allegations of a violation of Article 12 of the Code of Ethics.

The Hearing Panel noted that offering premiums or prizes as inducements, or the advertising of anything described as "free" is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents other than a "true picture" as required by Article 12.

The Hearing Panel concluded that although REALTOR® A was free to advertise "free market analysis with no obligation," such a representation was not a "true picture" if all of the terms governing availability are not clearly disclosed in the ad or representation. The Hearing Panel noted that the statement by REALTOR® A when he provided the "free market analysis" that it was "presumed" the property owner would list with REALTOR® A if the property was offered for sale, and the subsequent "reminders" by sales representatives of REALTOR® A about the "expectation" made the representation less than a "true picture." The panel concluded that REALTOR® A was in violation of Article 12.

**Case #12-10: REALTOR® Advertising Free Market Analysis (Originally Case #9-21. Revised and transferred to Article 19 as Case #19-13 May, 1988. Transferred to Article 12 November 1994. Revised November 2001.)**

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also had certificates printed reading: "This will entitle the bearer to one FREE Comparative Market Analysis with no obligation." The certificate carried the name of REALTOR® A and his firm. REALTOR® B presented a written complaint to the Secretary of the Board filing a charge against REALTOR® A of an alleged violation of Article 12 of the Code of Ethics.

The matter was referred to the Grievance Committee, which concluded the matter should be considered by a panel of the Professional Standards Committee. A hearing was convened with both REALTOR® A and REALTOR® B present.

REALTOR® A advised the Hearing Panel that he had placed the advertisements and provided the certificates in good faith. He stated he felt his ads did present a "true picture," and were not unethical. When the panel asked if his offering of a "free market analysis" was contingent upon his obtaining a listing or commission, REALTOR® A answered in the negative. He pointed out that he charged no fee for the service and provided it as represented on the certificates.

In the absence of any evidence indicating that the advertising by REALTOR® A was misleading, the Hearing Panel concluded that such advertising by REALTOR® A is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents less than a "true picture." However, if a charge is filed against a REALTOR® alleging violation of Article 12 and there is a hearing before the Professional Standards Committee, determination may properly be made of the truth of any representations made.

The Hearing Panel concluded that REALTOR® A had demonstrated that his ads presented a "true picture" and that he was not in violation of Article 12.

- ❖ You may represent your services as "free" or without cost even if you expect to receive compensation from a source other than your client provided that the potential for you to obtain a benefit from a third party is clearly disclosed at the same time. (Refer to Standard of Practice 12-2)

**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. (Amended 1/97)*

- ❖ If you offer incentives to list, sell, purchase, or lease property, be sure the terms and conditions of your offer are clear and readily understandable. (Refer to Standard of Practice 12-3)

#### **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. (Amended 1/95)*

- ❖ Obtain the client's permission to advertise the client's property. Never advertise listed property at a price other than that agreed to by the client. (Refer to Standard of Practice 12-4)

#### **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. (Amended 1/93)*

- ❖ All advertisements of listed property must include the name of your firm. (Refer to Standard of Practice 12-5)

#### **Standard of Practice 12-5**

*REALTORS® shall not advertise nor permit any person employed by or affiliated with them to advertise listed property without disclosing the name of the firm. (Adopted 11/86)*

- ❖ When acting as a principal in the sale or lease of your own property, disclose your status as a REALTOR® or as a licensee so that prospective purchasers or tenants will be aware of your special knowledge and expertise. (Refer to Standard of Practice 12-6 and Case Interpretation #12-8)

#### **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. (Amended 1/93)*

**Case #12-8: REALTOR® or REALTOR-ASSOCIATE® to Disclose Status as Real Estate Broker or Salesperson Even When Advertising Property Owned by the REALTOR® (Revised Case #19-11 May, 1988. Transferred to Article 12 November 1994.**

REALTOR® A decided to sell a residential investment property he owned in the city. He did not list the property with his firm, but rather advertised it for sale under the heading "For Sale By Owner," giving only his name and home telephone number. Mr. X responded to the ad, purchased the property, and took occupancy.

Shortly after moving into the property, Mr. X filed a complaint with the Board, alleging that REALTOR® A had violated Article 12 of the Code of Ethics by not disclosing that he was a real estate broker in his advertising or in negotiations for the property.

The Grievance Committee determined that the matter should be heard and referred it to the Professional Standards Committee for hearing. After following the Board's prescribed professional standards procedures, including proper notice to parties, a Hearing Panel was convened to hear the matter.

Mr. X testified that he had purchased the property without knowledge that REALTOR® A was a real estate broker. If he had known this, said Mr. X, he might have decided not to purchase the property or might have decided to have an independent appraisal of the property made before agreeing to purchase. In any event, he said, REALTOR® A's special knowledge and expertise placed him at a disadvantage.

REALTOR® A testified that the obligations imposed by Article 12 relate only to listed properties, where the REALTOR® acts as agent for the seller. He told the panel that he believed he had complied with the "true picture" test of Article 12 by advertising the property as a "For Sale By Owner," because it had not been listed with his firm and there was no agency relationship to disclose.

"Besides," explained REALTOR® A, "there was no need to disclose my licensure status in the advertisement, because my name is well known in the community as a real estate broker."

The Hearing Panel disagreed with REALTOR® A's reasoning and indicated in its decision that Article 12 as interpreted by Standard of Practice 12-6, does establish a requirement to disclose both ownership interest and licensure status when the REALTOR® advertises his own unlisted property for sale. Merely indicating REALTOR® A's name in the advertisement and assuming that his prominence in the real estate business was well known was not enough. The panel concluded that REALTOR® A was obliged to disclose his licensure status in the advertisement, since this knowledge might well have

affected Mr. X's negotiations on the property as well as his eventual decision to purchase.

REALTOR® A was found in violation of Article 12 of the Code of Ethics.

- ❖ Only listing brokers or cooperating (selling) brokers have the right to advertise that they "sold" the property. Either the listing broker or the cooperating broker may claim to have "sold" the property upon acceptance of a purchase offer by the seller. However, prior to closing, a cooperating broker may only post a "sold" sign with the consent of the listing broker. (Refer to Standard of Practice 12-7 and Case Interpretations #12-11, #12-12, and #12-13)

### **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. (Amended 1/96)*

### **Case #12-11: Advertisements by Individuals Other Than the Listing Broker (Adopted as Case #19-14 May, 1988. Transferred to Article 12 November, 1994. Revised November, 1995 and November, 1996.)**

REALTOR® A placed a full page ad in the Sunday supplement of his local newspaper. In the body of the ad were pictures of several homes and their addresses. At the top of the page was the following: "We've sold these—we can sell yours, too."

The following week three complaints were received from other Board Members alleging that REALTOR® A's ad was in violation of Article 12. Each of the complaints noted that REALTOR® A had participated in the transaction as the successful cooperating broker who had located the eventual purchasers, but the complaints also claimed that REALTOR® A's claim to have "sold" these properties was false and misleading since none of the properties had been listed with him and, in one instance, the sale had yet to close.

Since all the complaints involved the same advertisement, they were consolidated to be heard at the same hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® A defended his actions on the basis that although the properties had been listed with other brokers, he had been the "selling" or "cooperating" broker and was entitled to advertise his role in the transactions.

The Hearing Panel agreed with REALTOR® A's reasoning in their decision, pointing out that Article 12 as interpreted by Standard of Practice 12-7, provides that cooperating brokers (selling brokers) may claim to have "sold" the property and that such claims may be made by either the listing broker or

the cooperating broker or by both of them upon acceptance of a purchase offer by the seller. The panel also noted that REALTOR® A could have shown that he had "participated in" or had "cooperated in" these transactions and also met his ethical obligations.

The panel's decision also indicated that during the existence of any listing, the cooperating broker's rights to advertise and market flow from the listing broker. However, claims of this nature were not advertisements of the properties but rather were advertisements of the broker's services. The only limitation on the ability of a cooperating broker to claim or to represent that a property had been "sold" was that the listing broker's consent would be required before a "sold" sign could physically be placed on the seller's property prior to closing.

**Case #12-12: Advertising in the Guise of News (Adopted April, 1994. Revised November, 1995.)**

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, several complaints were filed against REALTOR® B claiming that he had engaged in deceptive advertising in violation of Article 12's "true picture" directive. These complaints were reviewed by the Grievance Committee which determined that a hearing should be held and that all of the related complaints would be consolidated in a single hearing. The appropriate notices were sent and the hearing was convened.

REALTOR® A, one of the complainants, introduced REALTOR® B's "Homeowners Neighborhood Newsletter" into evidence pointing out that, on the first page, REALTOR® B had prominently shown pictures of, and addresses for, ten homes in an exclusive area of town labeling each as "Recently Sold." REALTOR® A, the listing broker for several of these properties, stated that, in his opinion, the average reader would readily conclude that REALTOR® B, by advertising this way, was claiming to have listed and sold the properties and that his claims violated Article 12, as interpreted by Standard of Practice 12-7. In response, REALTOR® B indicated that Article 12 was limited in scope to ". . . advertising and representations to the public" and that his "Homeowners Neighborhood Newsletter" was not, in fact, advertising but rather a well-intentioned effort to make homeowners aware of current market values. "Sale prices in our county become a matter of public record once a deed of sale is recorded," REALTOR® B argued, "and anyone who wants to find out about recent sales can get that information from the recorder's office." "All I am doing," he continued, "is reporting news—and saving residents the time and effort of retrieving this information on their own. If someone appreciates my efforts and later buys or sells through me, so much the better, but that is not the reason for my newsletter."

After hearing from the complainants and the respondent, and after reviewing the content of the newsletter, the Hearing Panel concluded that it did, in fact,

violate Article 12 since, while the information regarding the properties themselves was accurate, its cumulative effect was to convey the impression that REALTOR® B had listed and/or sold the properties when he had not. The fact that he had been the cooperating broker in one of the transactions did not give him the right to claim, directly or indirectly, that he had "sold" any of the other properties because in no instance had he been the listing broker. The Hearing Panel did not accept REALTOR® B's claim that his newsletter was exempt from scrutiny under Article 12 in that he was disseminating news and not engaging in advertising. They noted that the name, address, and phone number of REALTOR® B's firm appeared prominently in several places; that a considerable portion of the newsletter was devoted to services available from REALTOR® B's firm and the advantages of doing business with REALTOR® B; and concluded that while the newsletter might, in fact, include an element of "news" a primary purpose of it was to advertise REALTOR® B and his firm and, consequently, that it was subject to scrutiny under Article 12.

- ❖ Remember that "For Sale" signs are a form of advertising subject to the requirements of Article 12. (Refer to Case Interpretation #12-1)]

**Case #12-1: Absence of Name on Sign (Reaffirmed Case #19-3 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)**

Prospect A observed a sign on a vacant lot reading: "For Sale—Call 330-5215." Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised and offended that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR-ASSOCIATE® B in REALTOR® A's office.

Prospect A filed a complaint against REALTOR® A and REALTOR-ASSOCIATE® B. REALTOR® A and REALTOR-ASSOCIATE® B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR® A stated that he permitted REALTOR-ASSOCIATE® B to put up the sign. REALTOR-ASSOCIATE® B's defense was that the sign was not a "formal" advertisement, such as a newspaper advertisement, business card, or billboard, to which he understood Article 12 to apply.

The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR-ASSOCIATE® B were in violation of Article 12.

- ❖ Avoid exaggeration and dishonesty in your advertisements. Strive to present a "true picture." (Refer to Case Interpretations #12-2, #12-3, and #12-4)

**Case #12-2: Exaggeration in Advertising (Reaffirmed Case #19-4 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)**

Prospect A noted REALTOR® B's classified advertisement describing a home with five acres "about 20 miles from the city" giving directions to the "modern 3-bedroom home, well maintained, and set in a charmingly landscaped site."

After visiting the property, Prospect A clipped out the ad and pasted it to a letter to the Board of REALTORS® complaining of the gross exaggeration it contained, which had induced him to waste time and money in inspecting the property. The property, he said, was actually 36 miles from the city limits. Its wood-lath support for plaster, which was visible in many large breaks in the walls, indicated it to be 40 years old or more. There was no evidence of painting in recent years. Several windows were broken, half of the back steps were missing. The house was located at the end of a crude dirt road in a small cleared area that had become densely overgrown in weeds—a picture of extreme neglect.

REALTOR® B was asked to respond to the charge of misleading advertising, and a hearing was called on the complaint by the Professional Standards Committee. REALTOR® B criticized the complainant for bringing the matter to the Board, pointing out that Prospect A had failed to mention that the property was priced at only \$30,000; that at such a price it was an exceptionally good buy to anyone looking for a small place with a few acres; that to get attention to such properties it was necessary to do a bit of "puffing" to attract attention in advertising; that as a matter of fact the general lines of the house were similar to many of modern design; that the house had been well enough maintained to be salvageable by anyone who would do a reasonable amount of work on it; and that, in his opinion, the site was truly "charming" in its rugged simplicity.

The Hearing Panel concluded that REALTOR® B had used gross exaggeration in his advertisement and was found in violation of Article 12 of the Code of Ethics.

**Case #12-3: Exaggeration in Advertising (Reaffirmed Case #19-5 May, 1988. Transferred to Article 12 November, 1994. Revised April, 1998.)**

In his efforts to sell a furnished apartment building, REALTOR® A, the listing broker, used newspaper advertising describing the property, including such phrases as "modern furnishings . . . most units newly equipped with ranges and refrigerators . . . excellent earnings record." Buyer B saw the ad, called REALTOR® A, was shown the property, signed an offer to buy, and wrote a check for a deposit. A few days later, he made a more careful inspection of the property and its earnings statements, and filed a complaint against REALTOR® A with the Board of REALTORS® charging misleading and exaggerated advertising.

The complaint was referred to the Grievance Committee which, after its review and evaluation, referred it to the Secretary directing that a hearing be scheduled before a Hearing Panel of the Professional Standards Committee.

At the hearing, Buyer B stated that because of certain pressures on him at the time, prudently or not, he had acted hurriedly in his business with REALTOR® A; that if the principle of caveat emptor governed the situation, he recognized the weakness of his position; that he also understood that his legal recourse was questionable; but that from the standpoint of ethical conduct he felt he had a grievous complaint against REALTOR® A that should be addressed.

He explained that he had been looking for just such an investment property in the general location; that the price appealed to him; that he had only a very limited time available on the day he was shown the property; that the three apartments which he was shown were attractively furnished and obviously had nearly new equipment in excellent condition; and that he had thought it advisable to make an offer, feeling that he could place full reliance on REALTOR® A's representation of the property both in his oral statements and his newspaper advertising.

His second, and more thorough, inspection revealed that the three apartments shown to him were the only apartments in the building with modern furnishings; the other nine had unattractive, badly worn and outmoded furnishings, with kitchen ranges and refrigerators more than ten years old. Moreover, he said, the earnings record of the building, which by ordinary standards was satisfactory for the two years immediately preceding, had shown high vacancy and a loss in two of the ten years of the building's life, had shown a definitely low return in three years, and had never shown an earnings record that could be described as "excellent".

Upon questioning as to whether full records of income and expenses had been submitted to him before he signed the contract, Buyer B said he was shown only the statements for the two proceeding years by REALTOR® A, who said that the other statements could be obtained for him, as was later done. Responding to Buyer B's specifics, REALTOR® A pointed out that the complaint did not charge him with misrepresenting anything in his oral statements to Buyer B; that the complaint, therefore, was based solely on his advertisement which he felt did not depart from accepted standards in advertising; that since the building was about ten years old, he felt free to say that all of its features, including the furnishings, were "modern"; that when he stated "most units newly equipped with ranges and refrigerators" he based that, too, on the fact that the building was about ten years old; and that, in his opinion, the earnings record of the building for its entire operating life, since it had shown a loss in only two of its ten years, could reasonably be described as "excellent".

Questioning of REALTOR® A revealed that the three apartments shown to Buyer B were, in fact, furnished with better and more modern furniture than the other nine apartments, and that these three were the only apartments in which the original ranges and refrigerators had been replaced. REALTOR® A's comment on this was, "Naturally, in showing the building, I directed attention to the most attractive features. This is just ordinary competence in selling."

It was the conclusion of the Hearing Panel that REALTOR® A's advertising used exaggeration and had not presented a true picture in his representations to the buyer. REALTOR® A was found in violation of Article 12.

**Case #12-4: True Picture in Advertising (Reaffirmed Case #19-6 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A was the exclusive marketing agent for a home building organization in Redtown, a suburban community within a metropolitan area that also contained the communities of Whitetown and Bluetown. As part of his sales effort, he ran the following newspaper advertisement:

Greenwood  
In Redtown  
STARTLING NEWS

On an identical house bought at "Greenwood" in Redtown, we have found that the difference in tax rates allows you to get \$5,000 more house free than if you bought the same house in Whitetown or Bluetown. We have been doing some figuring, and here's what we came up with:

Plan A—built in Whitetown  
Taxes approximately . . . \$1,200  
Plan B—built in Bluetown  
Taxes approximately . . . \$1,050  
Plan C—built in Redtown  
Taxes approximately . . . \$650

This means that in Redtown your monthly payments for the same house would be approximately \$46 less than in Whitetown, and \$33 less than in Bluetown. Since principal and interest are the same, you get \$5,000 or more house FREE when you buy in Greenwood.

REALTOR® B objected to the ad and sent it with a complaint to the Secretary of his Board, charging that the ad was misleading. The Secretary referred it to the Grievance Committee. The Grievance Committee, upon consideration, referred it back to the Secretary to schedule a hearing before a Hearing Panel of the Professional Standards Committee. The Hearing Panel considered the matter in a hearing attended by REALTORS® A and B.

It was the panel's opinion that it is not unethical to point out the current tax differentials of various municipal jurisdictions, but that the final paragraph of the advertisement in question constituted an attempt to capitalize on a tax differential that is not predictable. To offer \$5,000 or more house "free" based upon indefinite continuation of a current tax situation, which is not certain, is misleading. Therefore, the Hearing Panel concluded, the ad violated Article 12 of the Code of Ethics in that it did not present a true picture that could be assured by REALTOR® A.

- ❖ Advertising claims should not be based upon uncertain or unpredictable factors over which you have little or no control. (Refer to Case Interpretation #12-4)

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- ❖ While a "sold" sign may be placed on a property when an offer to purchase has been accepted, it should be removed if the transaction falls through. (Refer to Case Interpretation #12-5)

**Case #12-5: True Picture in Use of "Sold" Sign (Revised Case #19-7 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A, the listing broker, was charged by REALTOR® B with giving a false picture in his advertising by putting up a "sold" sign on property that had not been sold. REALTOR® A was notified of the complaint and of the date of a hearing on it scheduled before a Hearing Panel of his Board's Professional Standards Committee.

Undisputed testimony offered during the hearing revealed that REALTOR® A was an exclusive agent, offering Client C's home for sale. An offer to buy was obtained from Prospect D and a counter proposal by Client C was accepted. An earnest money deposit was made, and a date for settlement was agreed upon. At that point, REALTOR® A put up his "sold" sign. Several days later, Prospect D received an unexpected notice from his employer that he was to be transferred to another city. Prospect D immediately contacted REALTOR® A and Client C about his predicament. In an amicable discussion it was agreed that everyone had acted in good faith; that the property was readily marketable; that the earnest money deposit would be refunded; and that REALTOR® A would put the property on the market again. A week later, when REALTOR® B was showing a number of houses to a prospective buyer, they drove by Client C's property, and the prospect casually said that she didn't understand the "sold" sign, since she had been taken to see the house that morning by REALTOR® A.

REALTOR® B contended that a "sold" sign is a measure of a REALTOR®'s advertising, and that it cannot give a true picture if it is put up prior to the settlement and actual transfer of ownership.

The Hearing Panel's decision agreed with REALTOR® B's contention that the use of a "sold" sign constitutes advertising by a REALTOR® but did not agree that a "sold" sign could be put up only after the actual settlement and transfer of ownership. The decision indicated that after the client's acceptance of a bona fide offer, REALTOR® A could consider that he had brought about a sale and would not be in violation of the requirement to give a "true picture" by putting up a "sold" sign. However, once it was clear that the sale had fallen

through, the "sold" sign should have been immediately removed since allowing the sign to remain in place no longer provided a "true picture."

REALTOR® A was found by the panel to have violated Article 12.

- ❖ Don't mislead the public into believing they can save money by purchasing from you if that is not the case. (Refer to Case Interpretation #12-6)

**Case #12-6: Misleading Advertising (Reaffirmed Case #19-8 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A's business included real estate brokerage, property management, and home building. In one of his newspaper advertisements of his home building activities, in which he identified himself as a REALTOR®, there was prominently featured the words, "Buy Direct and Save." REALTOR® B sent a copy of the advertisement to the Board of REALTORS® as the basis of a complaint that REALTOR® A in his advertising was, through use of the quoted phrase, seeking to take unfair advantage of other REALTORS®.

At the hearing, it was brought out that REALTOR® A's properties had been listed with his real estate firm and processed through the MLS. He defended his advertising by asserting that it was no more than reasonable for him to seek the sale of houses in his subdivision through his own brokerage office to the greatest extent possible. He was not able to show the Hearing Panel any instances of reduced prices on direct sales even though several such sales had occurred.

It was the conclusion of the panel that REALTOR® A had violated Article 12. The panel's decision indicated that just because he engaged in home building he could not be exempted from the standards that apply to REALTORS® generally; and that the phrase "Buy Direct and Save" in his advertising was an attempt to convince prospective buyers that a lower price would be offered those purchasing direct rather than through cooperating brokers when, in fact, he had maintained the same prices and there was no saving by buying direct.

Avoid false advertising. (Refer to Case Interpretation #12-9)

**Case #12-9: Unethical Advertising (Originally Case #9-2. Revised and transferred to Article 19 as Case #19-12 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A inserted an ad in the local newspaper soliciting \$5,000 investments in a "sure thing." The ad explained that he was seeking only ten investors at \$5,000 each; that each investor would receive \$6,000 for his investment in 30 days; or, if he chose to invest for a longer period, could receive \$8,000 in 90 days. The ad stated that REALTOR® A personally

guaranteed this investment experience to the first ten investors who responded to the ad.

The President of REALTOR® A's Board saw the ad and was concerned. He requested the Board's Grievance Committee review the matter and determine if a hearing was warranted. The Grievance Committee asked REALTOR® A to demonstrate that he had put liquid assets in escrow to back up his published guarantee. REALTOR® A was at first evasive, and then explained that there was no possibility of any one losing any money as a result of his ad because he had simply been using ingenuity to develop a list of prospects interested in small real estate investments.

The Grievance Committee referred the matter to the Professional Standards Committee of the Board for a hearing, charging a violation of Article 12 of the Code of Ethics. In the subsequent hearing, REALTOR® A explained that he had told those who inquired that the opportunity was no longer available, but that he would take their names and addresses for future investment opportunities that might arise. He explained that in this case any guarantee he would make in a tangible transaction would, of course, be fully protected by liquid assets put in escrow.

The Hearing Panel concluded that REALTOR® A had not provided a "true picture" in his advertisement, and was in violation of Article 12.

Remember to observe Article 12's "true picture" mandate when advertising property as being "offered exclusively." (Refer to Case Interpretation #12-14)

### **Case #12-14: Advertising Property as "Offered Exclusively" (Adopted November, 1995.)**

REALTOR® B, an exclusive buyer agent, filed an ethics complaint against REALTOR® A claiming that her "for sale" signs violated Article 12's call for ". . . a true picture in advertising and . . . representations to the public."

At the hearing, REALTOR® B elaborated on the charge in her opening statement. "REALTOR® A's 'for sale' signs often include the words 'Offered Exclusively' on a rider attached to them," she said, "and buyers are misled into believing that they can only purchase these properties by dealing with REALTOR® A or one of her associates. Advertising like that is unfair to other brokers who are trying to cooperate in the sale of her listings."

REALTOR® A responded expressing her belief that while there might be a rare exception, most potential home purchasers were sufficiently sophisticated to realize that regardless of their wording, "for sale" signs were just that, announcements that property was on the market and that they could generally deal with any real estate broker that they chose. "Everybody realizes how MLS works and that we all cooperate with each other on almost all of our sales. My use of 'offered exclusively' or 'exclusively with' or

'exclusively by' or just plain 'exclusively' like other brokers use doesn't mislead anyone. And, as a practical matter, I do have an exclusive right to sell listing, and I am the seller's exclusive agent, each and every time I put one of those signs on listed property so I have to believe that I am meeting Article 12's 'true picture' test."

Agreeing with REALTOR® A's reasoning, the Hearing Panel concluded that she had not violated Article 12.

- ❖ "Linking" to other Internet websites, even if those sites include listings of other real estate professionals, does not constitute advertising of the type contemplated by Article 12. (Refer to Case Interpretation #12-15)

### **Case #12-15: Links to other Internet Sites (Adopted April, 1998.)**

Noting the increasing numbers of people using the Internet, REALTOR® A decided to have a Web site designed. She hired a consultant and proceeded to plan her site and its contents. Realizing that her Web site might be enhanced by providing a link to all the local listings on REALTOR.org, she decided to have her Web site designed to provide such a link.

A few months later, REALTOR® B, a competing broker in the same community, was surfing the web and happened upon REALTOR® A's new Web site. Upon exploring it, he discovered the link to REALTOR.org which included REALTOR® B's listings.

REALTOR® B immediately filed an ethics complaint with the local Board of REALTORS® alleging that REALTOR® A had violated Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4. Following review by the Board's Grievance Committee, the complaint was scheduled for a hearing before a Hearing Panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B argued that by providing a link to the listings on REALTOR.org, REALTOR® A was advertising without authority all the listings in the local MLS on her Internet Web site.

REALTOR® A countered saying that in the culture of the Internet, it is well established that links are merely a method of "pointing" or "referring" to another site; that the information had not been altered nor had any information been deleted; and that people who view Internet Web site understand that. She went on to analogize what she had done to distributing copies of the local homes magazine. Even though the magazine contained ads promoting other REALTORS®' listings, by delivering that information to prospective buyers, she was not advertising their listings.

After hearing all relevant testimony, the Hearing Panel went into executive session and concluded that by linking to an Internet Web site which contained

the ads of other REALTORS® listings, REALTOR® A had not engaged in unauthorized advertising and had not violated Article 12.

- ❖ You cannot copy information from the Internet websites of other real estate professionals and publish it on your website without the listing broker's permission even if the information on your website identifies the listing broker. (Refer to Case Interpretation #12-16)

**Case #12-16, Copying and Publishing other Brokers' Advertisements (Adopted April, 1998.)**

Wanting to take advantage of the virtual explosion of the World Wide Web, REALTOR® A, who had a respectable level of expertise in computer technology, decided to purchase a Web site design software package and set out to design his own Web site.

Understanding that his site would be greatly enhanced by providing as much information as possible, he decided he would offer two pages of listings; his own and some choice listings of his competitors. Being careful not to present a misleading picture in his advertising, he was very careful to list the company name and phone number of the listing company with each ad of his competitors' listings.

When REALTOR® B found one of her listings on REALTOR® A's new website, she filed an ethics complaint with the local Association of REALTORS® complaining that REALTOR® A had "blatantly and without authorization of any kind whatsoever advertised my listing on his Internet Web site and in so doing was clearly in violation of Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4."

The matter was placed on the agenda of the Grievance Committee. At their next meeting, the Grievance Committee decided that the alleged conduct, if taken at face value, could possibly violate Article 12 and directed the Association's Executive Officer to schedule an ethics hearing before a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B produced a printed copy of the advertisement of her listing which had been placed on REALTOR® A's Web site. She produced a copy of her listing agreement and a photograph of the property, which matched the information in the ad. She testified that she had never been contacted by REALTOR® A for permission to advertise her listing.

When REALTOR® A presented his case, he showed the hearing panel several examples of REALTORS® providing links to sites with ads for other REALTORS®' listings. He said he saw no fundamental difference between providing such links and actually advertising other listings on his Web site, especially when he was very careful to also give the listing company's name and phone number. He went on to argue that REALTOR® B's clients would

be hard pressed to understand REALTOR® B's objection to giving their properties the additional exposure they received on REALTOR® A's Web site.

Upon the conclusion of all testimony and closing statements, the Hearing Panel met in executive session and decided that while providing a link to listings of other REALTORS® did not violate Article 12, by actually publishing REALTOR® B's listing on his Web site REALTOR® A was not linking, but instead was advertising (by copying, as opposed to simply providing a link) without authority. In their findings of fact, the Hearing Panel also noted that even if REALTOR® B's clients might not object to such advertising, the lack of objection could not be assumed and would not relieve REALTOR® A of the obligation to obtain REALTOR® B's specific authority and consent to advertise her listings.

The Hearing Panel found REALTOR® A in violation of Article 12 of the Code of Ethics.

## **CASE INTERPRETATIONS RELATED TO ARTICLE 12:**

### **Case #12-1: Absence of Name on Sign (Reaffirmed Case #19-3 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)**

Prospect A observed a sign on a vacant lot reading: "For Sale—Call 330-5215." Thinking he would be dealing with a For Sale by Owner, he called the number on the sign. He was surprised and offended that the lot was exclusively listed by REALTOR® A, and the telephone number on the sign was the home number of REALTOR-ASSOCIATE® B in REALTOR® A's office.

Prospect A filed a complaint against REALTOR® A and REALTOR-ASSOCIATE® B. REALTOR® A and REALTOR-ASSOCIATE® B alleging a violation of Article 12 of the Code of Ethics.

At the hearing, REALTOR® A stated that he permitted REALTOR-ASSOCIATE® B to put up the sign. REALTOR-ASSOCIATE® B's defense was that the sign was not a "formal" advertisement, such as a newspaper advertisement, business card, or billboard, to which he understood Article 12 to apply.

The Hearing Panel determined that the sign was an advertisement within the meaning of Article 12; that its use violated that Article of the Code; and that both REALTOR® A and REALTOR-ASSOCIATE® B were in violation of Article 12.

### **Case #12-2: Exaggeration in Advertising (Reaffirmed Case #19-4 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)**

Prospect A noted REALTOR® B's classified advertisement describing a home with five acres "about 20 miles from the city" giving directions to the "modern 3-bedroom home, well maintained, and set in a charmingly landscaped site."

After visiting the property, Prospect A clipped out the ad and pasted it to a letter to the Board of REALTORS® complaining of the gross exaggeration it contained, which had induced him to waste time and money in inspecting the property. The property, he said, was actually 36 miles from the city limits. Its wood-lath support for plaster, which was visible in many large breaks in the walls, indicated it to be 40 years old or more. There was no evidence of painting in recent years. Several windows were broken, half of the back steps were missing. The house was located at the end of a crude dirt road in a small cleared area that had become densely overgrown in weeds—a picture of extreme neglect.

REALTOR® B was asked to respond to the charge of misleading advertising, and a hearing was called on the complaint by the Professional Standards Committee. REALTOR® B criticized the complainant for bringing the matter to the Board, pointing out that Prospect A had failed to mention that the property was priced at only \$30,000; that at such a price it was an exceptionally good buy to anyone looking for a small place with a few acres; that to get attention to such properties it was necessary to do a bit of "puffing" to attract attention in advertising; that as a matter of fact the general lines of the house were similar to many of

modern design; that the house had been well enough maintained to be salvageable by anyone who would do a reasonable amount of work on it; and that, in his opinion, the site was truly "charming" in its rugged simplicity.

The Hearing Panel concluded that REALTOR® B had used gross exaggeration in his advertisement and was found in violation of Article 12 of the Code of Ethics.

**Case #12-3: Exaggeration in Advertising (Reaffirmed Case #19-5 May, 1988. Transferred to Article 12 November, 1994. Revised April, 1998.)**

In his efforts to sell a furnished apartment building, REALTOR® A, the listing broker, used newspaper advertising describing the property, including such phrases as "modern furnishings . . . most units newly equipped with ranges and refrigerators . . . excellent earnings record." Buyer B saw the ad, called REALTOR® A, was shown the property, signed an offer to buy, and wrote a check for a deposit. A few days later, he made a more careful inspection of the property and its earnings statements, and filed a complaint against REALTOR® A with the Board of REALTORS® charging misleading and exaggerated advertising.

The complaint was referred to the Grievance Committee which, after its review and evaluation, referred it to the Secretary directing that a hearing be scheduled before a Hearing Panel of the Professional Standards Committee.

At the hearing, Buyer B stated that because of certain pressures on him at the time, prudently or not, he had acted hurriedly in his business with REALTOR® A; that if the principle of caveat emptor governed the situation, he recognized the weakness of his position; that he also understood that his legal recourse was questionable; but that from the standpoint of ethical conduct he felt he had a grievous complaint against REALTOR® A that should be addressed.

He explained that he had been looking for just such an investment property in the general location; that the price appealed to him; that he had only a very limited time available on the day he was shown the property; that the three apartments which he was shown were attractively furnished and obviously had nearly new equipment in excellent condition; and that he had thought it advisable to make an offer, feeling that he could place full reliance on REALTOR® A's representation of the property both in his oral statements and his newspaper advertising.

His second, and more thorough, inspection revealed that the three apartments shown to him were the only apartments in the building with modern furnishings; the other nine had unattractive, badly worn and outmoded furnishings, with kitchen ranges and refrigerators more than ten years old. Moreover, he said, the earnings record of the building, which by ordinary standards was satisfactory for the two years immediately preceding, had shown high vacancy and a loss in two of the ten years of the building's life, had shown a definitely low return in three years, and had never shown an earnings record that could be described as "excellent".

Upon questioning as to whether full records of income and expenses had been submitted to him before he signed the contract, Buyer B said he was shown only the statements for the two proceeding years by REALTOR® A, who said that the other statements could be obtained for him, as was later done.

Responding to Buyer B's specifics, REALTOR® A pointed out that the complaint did not charge him with misrepresenting anything in his oral statements to Buyer B; that the complaint, therefore, was based solely on his advertisement which he felt did not depart from accepted standards in advertising; that since the building was about ten years old, he felt free to say that all of its features, including the furnishings, were "modern"; that when he stated "most units newly equipped with ranges and refrigerators" he based that, too, on the fact that the building was about ten years old; and that, in his opinion, the earnings record of the building for its entire operating life, since it had shown a loss in only two of its ten years, could reasonably be described as "excellent".

Questioning of REALTOR® A revealed that the three apartments shown to Buyer B were, in fact, furnished with better and more modern furniture than the other nine apartments, and that these three were the only apartments in which the original ranges and refrigerators had been replaced. REALTOR® A's comment on this was, "Naturally, in showing the building, I directed attention to the most attractive features. This is just ordinary competence in selling."

It was the conclusion of the Hearing Panel that REALTOR® A's advertising used exaggeration and had not presented a true picture in his representations to the buyer. REALTOR® A was found in violation of Article 12.

**Case #12-4: True Picture in Advertising (Reaffirmed Case #19-6 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A was the exclusive marketing agent for a home building organization in Redtown, a suburban community within a metropolitan area that also contained the communities of Whitetown and Bluetown. As part of his sales effort, he ran the following newspaper advertisement:

Greenwood  
In Redtown  
STARTLING NEWS

On an identical house bought at "Greenwood" in Redtown, we have found that the difference in tax rates allows you to get \$5,000 more house free than if you bought the same house in Whitetown or Bluetown. We have been doing some figuring, and here's what we came up with:

Plan A—built in Whitetown  
Taxes approximately . . . \$1,200  
Plan B—built in Bluetown  
Taxes approximately . . . \$1,050  
Plan C—built in Redtown

Taxes approximately . . . \$650

This means that in Redtown your monthly payments for the same house would be approximately \$46 less than in Whitetown, and \$33 less than in Bluetown. Since principal and interest are the same, you get \$5,000 or more house FREE when you buy in Greenwood.

REALTOR® B objected to the ad and sent it with a complaint to the Secretary of his Board, charging that the ad was misleading. The Secretary referred it to the Grievance Committee. The Grievance Committee, upon consideration, referred it back to the Secretary to schedule a hearing before a Hearing Panel of the Professional Standards Committee. The Hearing Panel considered the matter in a hearing attended by REALTORS® A and B.

It was the panel's opinion that it is not unethical to point out the current tax differentials of various municipal jurisdictions, but that the final paragraph of the advertisement in question constituted an attempt to capitalize on a tax differential that is not predictable. To offer \$5,000 or more house "free" based upon indefinite continuation of a current tax situation, which is not certain, is misleading. Therefore, the Hearing Panel concluded, the ad violated Article 12 of the Code of Ethics in that it did not present a true picture that could be assured by REALTOR® A.

**Case #12-5: True Picture in Use of "Sold" Sign (Revised Case #19-7 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A, the listing broker, was charged by REALTOR® B with giving a false picture in his advertising by putting up a "sold" sign on property that had not been sold. REALTOR® A was notified of the complaint and of the date of a hearing on it scheduled before a Hearing Panel of his Board's Professional Standards Committee.

Undisputed testimony offered during the hearing revealed that REALTOR® A was an exclusive agent, offering Client C's home for sale. An offer to buy was obtained from Prospect D and a counter proposal by Client C was accepted. An earnest money deposit was made, and a date for settlement was agreed upon. At that point, REALTOR® A put up his "sold" sign. Several days later, Prospect D received an unexpected notice from his employer that he was to be transferred to another city. Prospect D immediately contacted REALTOR® A and Client C about his predicament. In an amicable discussion it was agreed that everyone had acted in good faith; that the property was readily marketable; that the earnest money deposit would be refunded; and that REALTOR® A would put the property on the market again. A week later, when REALTOR® B was showing a number of houses to a prospective buyer, they drove by Client C's property, and the prospect casually said that she didn't understand the "sold" sign, since she had been taken to see the house that morning by REALTOR® A.

REALTOR® B contended that a "sold" sign is a measure of a REALTOR®'s advertising, and that it cannot give a true picture if it is put up prior to the settlement and actual transfer of ownership.

The Hearing Panel's decision agreed with REALTOR® B's contention that the use of a "sold" sign constitutes advertising by a REALTOR® but did not agree that a "sold" sign could be put up only after the actual settlement and transfer of ownership. The decision indicated that after the client's acceptance of a bona fide offer, REALTOR® A could consider that he had brought about a sale and would not be in violation of the requirement to give a "true picture" by putting up a "sold" sign. However, once it was clear that the sale had fallen through, the "sold" sign should have been immediately removed since allowing the sign to remain in place no longer provided a "true picture."

REALTOR® A was found by the panel to have violated Article 12.

**Case #12-6: Misleading Advertising (Reaffirmed Case #19-8 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A's business included real estate brokerage, property management, and home building. In one of his newspaper advertisements of his home building activities, in which he identified himself as a REALTOR®, there was prominently featured the words, "Buy Direct and Save." REALTOR® B sent a copy of the advertisement to the Board of REALTORS® as the basis of a complaint that REALTOR® A in his advertising was, through use of the quoted phrase, seeking to take unfair advantage of other REALTORS®.

At the hearing, it was brought out that REALTOR® A's properties had been listed with his real estate firm and processed through the MLS. He defended his advertising by asserting that it was no more than reasonable for him to seek the sale of houses in his subdivision through his own brokerage office to the greatest extent possible. He was not able to show the Hearing Panel any instances of reduced prices on direct sales even though several such sales had occurred.

It was the conclusion of the panel that REALTOR® A had violated Article 12. The panel's decision indicated that just because he engaged in home building he could not be exempted from the standards that apply to REALTORS® generally; and that the phrase "Buy Direct and Save" in his advertising was an attempt to convince prospective buyers that a lower price would be offered those purchasing direct rather than through cooperating brokers when, in fact, he had maintained the same prices and there was no saving by buying direct.

**Case #12-7: REALTOR® Advertising Free Market Analysis (Reaffirmed Case #19-9 May, 1988. Transferred to Article 12 November 1994. Revised November 2001.)**

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also distributed certificates reading, "This will entitle the bearer of this certificate to one (1) FREE Market Analysis with no obligation to bearer." The certificate included the name of REALTOR® A and his firm.

A property owner complained about "being the victim of a come-on scheme" to solicit the listing of his property which the Grievance Committee referred for a hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing the property owner testified he had called REALTOR® A to have him prepare a market analysis of his residential property, ". . . with no obligation. . ." as claimed in REALTOR® A's ads. However, the property owner said that when REALTOR® A came to his home, he explained that he would be glad to provide the market analysis but said, "I presume you understand that when we provide this service, we also expect that if you list your property, you will permit us to serve you." The property owner testified that REALTOR® A did not press the matter at the time and did provide a market analysis. The property owner told the panel that for the next three weeks REALTOR® A or one of his representatives called "practically every single day" soliciting the listing of his home. The property owner testified that on several occasions, someone from REALTOR® A's office reminded him that REALTOR® A had provided a "valuable free service and we feel that you owe us the listing of the property."

REALTOR® A responded that he had provided the "free market analysis" as represented in his advertising, and had provided it ". . . with no obligation." He stated that he had neither asked for nor received a fee for the market analysis. He could not understand why he was required to appear before a Hearing Panel in connection with allegations of a violation of Article 12 of the Code of Ethics.

The Hearing Panel noted that offering premiums or prizes as inducements, or the advertising of anything described as "free" is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents other than a "true picture" as required by Article 12.

The Hearing Panel concluded that although REALTOR® A was free to advertise "free market analysis with no obligation," such a representation was not a "true picture" if all of the terms governing availability are not clearly disclosed in the ad or representation. The Hearing Panel noted that the statement by REALTOR® A when he provided the "free market analysis" that it was "presumed" the property owner would list with REALTOR® A if the property was offered for sale, and the subsequent "reminders" by sales representatives of REALTOR® A about the "expectation" made the representation less than a "true picture." The panel concluded that REALTOR® A was in violation of Article 12.

**Case #12-8: REALTOR® or REALTOR-ASSOCIATE® to Disclose Status as Real Estate Broker or Salesperson Even When Advertising Property Owned by the REALTOR® (Revised Case #19-11 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A decided to sell a residential investment property he owned in the city. He did not list the property with his firm, but rather advertised it for sale under the heading "For Sale By Owner," giving only his name and home telephone number. Mr. X responded to the ad, purchased the property, and took occupancy.

Shortly after moving into the property, Mr. X filed a complaint with the Board, alleging that REALTOR® A had violated Article 12 of the Code of Ethics by not disclosing that he was a real estate broker in his advertising or in negotiations for the property.

The Grievance Committee determined that the matter should be heard and referred it to the Professional Standards Committee for hearing. After following the Board's prescribed professional standards procedures, including proper notice to parties, a Hearing Panel was convened to hear the matter.

Mr. X testified that he had purchased the property without knowledge that REALTOR® A was a real estate broker. If he had known this, said Mr. X, he might have decided not to purchase the property or might have decided to have an independent appraisal of the property made before agreeing to purchase. In any event, he said, REALTOR® A's special knowledge and expertise placed him at a disadvantage.

REALTOR® A testified that the obligations imposed by Article 12 relate only to listed properties, where the REALTOR® acts as agent for the seller. He told the panel that he believed he had complied with the "true picture" test of Article 12 by advertising the property as a "For Sale By Owner," because it had not been listed with his firm and there was no agency relationship to disclose.

"Besides," explained REALTOR® A, "there was no need to disclose my licensure status in the advertisement, because my name is well known in the community as a real estate broker."

The Hearing Panel disagreed with REALTOR® A's reasoning and indicated in its decision that Article 12 as interpreted by Standard of Practice 12-6, does establish a requirement to disclose both ownership interest and licensure status when the REALTOR® advertises his own unlisted property for sale. Merely indicating REALTOR® A's name in the advertisement and assuming that his prominence in the real estate business was well known was not enough. The panel concluded that REALTOR® A was obliged to disclose his licensure status in the advertisement, since this knowledge might well have affected Mr. X's negotiations on the property as well as his eventual decision to purchase.

REALTOR® A was found in violation of Article 12 of the Code of Ethics.

**Case #12-9: Unethical Advertising (Originally Case #9-2. Revised and transferred to Article 19 as Case #19-12 May, 1988. Transferred to Article 12 November, 1994.)**

REALTOR® A inserted an ad in the local newspaper soliciting \$5,000 investments in a "sure thing." The ad explained that he was seeking only ten investors at \$5,000 each; that each investor would receive \$6,000 for his investment in 30 days; or, if he chose to invest for a longer period, could receive \$8,000 in 90 days. The ad stated that REALTOR® A personally guaranteed this investment experience to the first ten investors who responded to the ad.

The President of REALTOR® A's Board saw the ad and was concerned. He requested the Board's Grievance Committee review the matter and determine if a hearing was warranted. The Grievance Committee asked REALTOR® A to demonstrate that he had put liquid assets in escrow to back up his published guarantee. REALTOR® A was at first evasive, and then explained that there was no possibility of any one losing any money as a result of

his ad because he had simply been using ingenuity to develop a list of prospects interested in small real estate investments.

The Grievance Committee referred the matter to the Professional Standards Committee of the Board for a hearing, charging a violation of Article 12 of the Code of Ethics. In the subsequent hearing, REALTOR® A explained that he had told those who inquired that the opportunity was no longer available, but that he would take their names and addresses for future investment opportunities that might arise. He explained that in this case any guarantee he would make in a tangible transaction would, of course, be fully protected by liquid assets put in escrow.

The Hearing Panel concluded that REALTOR® A had not provided a "true picture" in his advertisement, and was in violation of Article 12.

**Case #12-10: REALTOR® Advertising Free Market Analysis (Originally Case #9-21. Revised and transferred to Article 19 as Case #19-13 May, 1988. Transferred to Article 12 November, 1994. Revised November, 2001.)**

REALTOR® A advertised in the local newspaper as follows: "Free Market Analysis With No Obligation." REALTOR® A also had certificates printed reading: "This will entitle the bearer to one FREE Comparative Market Analysis with no obligation." The certificate carried the name of REALTOR® A and his firm. REALTOR® B presented a written complaint to the Secretary of the Board filing a charge against REALTOR® A of an alleged violation of Article 12 of the Code of Ethics.

The matter was referred to the Grievance Committee which concluded the matter should be considered by a panel of the Professional Standards Committee. A hearing was convened with both REALTOR® A and REALTOR® B present.

REALTOR® A advised the Hearing Panel that he had placed the advertisements and provided the certificates in good faith. He stated he felt his ads did present a "true picture," and were not unethical. When the panel asked if his offering of a "free market analysis" was contingent upon his obtaining a listing or commission, REALTOR® A answered in the negative. He pointed out that he charged no fee for the service and provided it as represented on the certificates.

In the absence of any evidence indicating that the advertising by REALTOR® A was misleading, the Hearing Panel concluded that such advertising by REALTOR® A is not prohibited by the Code of Ethics nor can such advertising be prohibited by a Board of REALTORS® unless it presents less than a "true picture." However, if a charge is filed against a REALTOR® alleging violation of Article 12 and there is a hearing before the Professional Standards Committee, determination may properly be made of the truth of any representations made.

The Hearing Panel concluded that REALTOR® A had demonstrated that his ads presented a "true picture" and that he was not in violation of Article 12.

**Case #12-11: Advertisements by Individuals Other Than the Listing Broker (Adopted as Case #19-14 May, 1988. Transferred to Article 12 November, 1994. Revised November, 1995 and November, 1996.)**

REALTOR® A placed a full page ad in the Sunday supplement of his local newspaper. In the body of the ad were pictures of several homes and their addresses. At the top of the page was the following: "We've sold these—we can sell yours, too."

The following week three complaints were received from other Board Members alleging that REALTOR® A's ad was in violation of Article 12. Each of the complaints noted that REALTOR® A had participated in the transaction as the successful cooperating broker who had located the eventual purchasers, but the complaints also claimed that REALTOR® A's claim to have "sold" these properties was false and misleading since none of the properties had been listed with him and, in one instance, the sale had yet to close.

Since all the complaints involved the same advertisement, they were consolidated to be heard at the same hearing before a Hearing Panel of the Professional Standards Committee.

At the hearing, REALTOR® A defended his actions on the basis that although the properties had been listed with other brokers, he had been the "selling" or "cooperating" broker and was entitled to advertise his role in the transactions.

The Hearing Panel agreed with REALTOR® A's reasoning in their decision, pointing out that Article 12 as interpreted by Standard of Practice 12-7, provides that cooperating brokers (selling brokers) may claim to have "sold" the property and that such claims may be made by either the listing broker or the cooperating broker or by both of them upon acceptance of a purchase offer by the seller. The panel also noted that REALTOR® A could have shown that he had "participated in" or had "cooperated in" these transactions and also met his ethical obligations.

The panel's decision also indicated that during the existence of any listing, the cooperating broker's rights to advertise and market flow from the listing broker. However, claims of this nature were not advertisements of the properties but rather were advertisements of the broker's services. The only limitation on the ability of a cooperating broker to claim or to represent that a property had been "sold" was that the listing broker's consent would be required before a "sold" sign could physically be placed on the seller's property prior to closing.

**Case #12-12: Advertising in the Guise of News (Adopted April, 1994. Revised November, 1995.)**

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, several complaints were filed against REALTOR® B claiming that he had engaged in deceptive advertising in violation of Article 12's "true picture" directive. These complaints were reviewed by the Grievance Committee which determined that a hearing should be held and that all of the related complaints would be consolidated in a single hearing. The appropriate notices were sent and the hearing was convened.

REALTOR® A, one of the complainants, introduced REALTOR® B's "Homeowners Neighborhood Newsletter" into evidence pointing out that, on the first page, REALTOR® B had prominently shown pictures of, and addresses for, ten homes in an exclusive area of town labeling each as "Recently Sold." REALTOR® A, the listing broker for several of these properties, stated that, in his opinion, the average reader would readily conclude that REALTOR® B, by advertising this way, was claiming to have listed and sold the properties and that his claims violated Article 12, as interpreted by Standard of Practice 12-7. In response, REALTOR® B indicated that Article 12 was limited in scope to ". . . advertising and representations to the public" and that his "Homeowners Neighborhood Newsletter" was not, in fact, advertising but rather a well-intentioned effort to make homeowners aware of current market values. "Sale prices in our county become a matter of public record once a deed of sale is recorded," REALTOR® B argued, "and anyone who wants to find out about recent sales can get that information from the recorder's office." "All I am doing," he continued, "is reporting news—and saving residents the time and effort of retrieving this information on their own. If someone appreciates my efforts and later buys or sells through me, so much the better, but that is not the reason for my newsletter."

After hearing from the complainants and the respondent, and after reviewing the content of the newsletter, the Hearing Panel concluded that it did, in fact, violate Article 12 since, while the information regarding the properties themselves was accurate, its cumulative effect was to convey the impression that REALTOR® B had listed and/or sold the properties when he had not. The fact that he had been the cooperating broker in one of the transactions did not give him the right to claim, directly or indirectly, that he had "sold" any of the other properties because in no instance had he been the listing broker. The Hearing Panel did not accept REALTOR® B's claim that his newsletter was exempt from scrutiny under Article 12 in that he was disseminating news and not engaging in advertising. They noted that the name, address, and phone number of REALTOR® B's firm appeared prominently in several places; that a considerable portion of the newsletter was devoted to services available from REALTOR® B's firm and the advantages of doing business with REALTOR® B; and concluded that while the newsletter might, in fact, include an element of "news" a primary purpose of it was to advertise REALTOR® B and his firm and, consequently, that it was subject to scrutiny under Article 12.

**Case #12-13: Advertising Including Information Based on Other Brokers' Transactions (Adopted November, 1994. Revised November, 1997.)**

Shortly after mailing his "Homeowners Neighborhood Newsletter" to local residents, a complaint was filed against REALTOR® B alleging he had engaged in deceptive advertising in violation of Article 12's "true picture" mandate. The complaint was reviewed by the Grievance Committee which determined that a hearing should be held. Appropriate notices were sent and a hearing was convened.

REALTOR A, the complainant, provided panel members with copies of REALTOR® B's "Homeowners Neighborhood Newsletter" noting that REALTOR® B had compiled a list of 20 homes in an exclusive area of town, titling the list "Recently Sold." REALTOR® A, the listing broker for two of those properties, stated that he believed that readers could

conclude that REALTOR® B, in advertising this way, had constructively claimed to have listed and sold all of the properties on the list and that such claims violated Article 12.

In his defense, REALTOR® B acknowledged that his "Homeowners Neighborhood Newsletter" was, in fact, primarily an advertising vehicle and that it did not have a regular publication schedule. While it included news and information, including tips on how to make residential property more readily saleable and information regarding products and services offered by REALTOR® B's firm, its primary purpose was to generate business for REALTOR® B's firm.

REALTOR® B defended inclusion of the "Recently Sold" list, pointing out that all of the properties on the list were the subject of recent sales transactions; that the period of time during which the transactions had closed was clearly stated; that the fact that the information was taken from the local MLS compilation of historical data had been duly noted; that a footnote at the bottom of the page clearly indicated that the properties on the list had been listed and sold by various Participants in the MLS; and that such use was consistent with the local MLS rules and regulations.

The Hearing Panel accepted REALTOR® B's defense, holding that reasonable readers would conclude that most newsletters were, in reality, promotional advertising pieces and, in any case, that REALTOR B's newsletter had included some items of "news". Moreover, they noted that if REALTOR® B had simply listed the 20 transactions, titling them as "recently sold" and had done nothing more, then a reasonable reader might have concluded that he was claiming to have listed and sold those properties. However, since REALTOR® B had included a footnote pointing out that the properties on the list had been listed and sold by various Participants in the MLS, the fact that REALTOR® B had not included the names of each listing broker could not be construed as REALTOR® B claiming to have been the listing broker in each instance or to have "sold" each of the properties.

#### **Case #12-14: Advertising Property as "Offered Exclusively" (Adopted November, 1995.)**

REALTOR® B, an exclusive buyer agent, filed an ethics complaint against REALTOR® A claiming that her "for sale" signs violated Article 12's call for ". . . a true picture in advertising and . . . representations to the public."

At the hearing, REALTOR® B elaborated on the charge in her opening statement. "REALTOR® A's 'for sale' signs often include the words 'Offered Exclusively' on a rider attached to them," she said, "and buyers are misled into believing that they can only purchase these properties by dealing with REALTOR® A or one of her associates. Advertising like that is unfair to other brokers who are trying to cooperate in the sale of her listings."

REALTOR® A responded expressing her belief that while there might be a rare exception, most potential home purchasers were sufficiently sophisticated to realize that regardless of their wording, "for sale" signs were just that, announcements that property was on the market and that they could generally deal with any real estate broker that they chose.

"Everybody realizes how MLS works and that we all cooperate with each other on almost all of our sales. My use of 'offered exclusively' or 'exclusively with' or 'exclusively by' or just plain 'exclusively' like other brokers use doesn't mislead anyone. And, as a practical matter, I do have an exclusive right to sell listing, and I am the seller's exclusive agent, each and every time I put one of those signs on listed property so I have to believe that I am meeting Article 12's 'true picture' test."

Agreeing with REALTOR® A's reasoning, the Hearing Panel concluded that she had not violated Article 12.

### **Case #12-15: Links to other Internet Sites (Adopted April, 1998.)**

Noting the increasing numbers of people using the Internet, REALTOR® A decided to have a Web site designed. She hired a consultant and proceeded to plan her site and its contents. Realizing that her Web site might be enhanced by providing a link to all the local listings on REALTOR.org, she decided to have her Web site designed to provide such a link.

A few months later, REALTOR® B, a competing broker in the same community, was surfing the web and happened upon REALTOR® A's new Web site. Upon exploring it, he discovered the link to REALTOR.org which included REALTOR® B's listings.

REALTOR® B immediately filed an ethics complaint with the local Board of REALTORS® alleging that REALTOR® A had violated Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4. Following review by the Board's Grievance Committee, the complaint was scheduled for a hearing before a Hearing Panel of the Board's Professional Standards Committee.

At the hearing, REALTOR® B argued that by providing a link to the listings on REALTOR.org, REALTOR® A was advertising without authority all the listings in the local MLS on her Internet Web site.

REALTOR® A countered saying that in the culture of the Internet, it is well established that links are merely a method of "pointing" or "referring" to another site; that the information had not been altered nor had any information been deleted; and that people who view Internet Web site understand that. She went on to analogize what she had done to distributing copies of the local homes magazine. Even though the magazine contained ads promoting other REALTORS®' listings, by delivering that information to prospective buyers, she was not advertising their listings.

After hearing all relevant testimony, the Hearing Panel went into executive session and concluded that by linking to an Internet Web site which contained the ads of other REALTORS® listings, REALTOR® A had not engaged in unauthorized advertising and had not violated Article 12.

### **Case #12-16, Copying and Publishing other Brokers' Advertisements (Adopted April, 1998.)**

Wanting to take advantage of the virtual explosion of the World Wide Web, REALTOR® A, who had a respectable level of expertise in computer technology, decided to purchase a Web site design software package and set out to design his own Web site.

Understanding that his site would be greatly enhanced by providing as much information as possible, he decided he would offer two pages of listings; his own and some choice listings of his competitors. Being careful not to present a misleading picture in his advertising, he was very careful to list the company name and phone number of the listing company with each ad of his competitors' listings.

When REALTOR® B found one of her listings on REALTOR® A's new website, she filed an ethics complaint with the local Association of REALTORS® complaining that REALTOR® A had "blatantly and without authorization of any kind whatsoever advertised my listing on his Internet Web site and in so doing was clearly in violation of Article 12 of the Code of Ethics as interpreted by Standard of Practice 12-4."

The matter was placed on the agenda of the Grievance Committee. At their next meeting, the Grievance Committee decided that the alleged conduct, if taken at face value, could possibly violate Article 12 and directed the Association's Executive Officer to schedule an ethics hearing before a Hearing Panel of the Association's Professional Standards Committee.

At the hearing, REALTOR® B produced a printed copy of the advertisement of her listing which had been placed on REALTOR® A's Web site. She produced a copy of her listing agreement and a photograph of the property, which matched the information in the ad. She testified that she had never been contacted by REALTOR® A for permission to advertise her listing.

When REALTOR® A presented his case, he showed the hearing panel several examples of REALTORS® providing links to sites with ads for other REALTORS®' listings. He said he saw no fundamental difference between providing such links and actually advertising other listings on his Web site, especially when he was very careful to also give the listing company's name and phone number. He went on to argue that REALTOR® B's clients would be hard pressed to understand REALTOR® B's objection to giving their properties the additional exposure they received on REALTOR® A's Web site.

Upon the conclusion of all testimony and closing statements, the Hearing Panel met in executive session and decided that while providing a link to listings of other REALTORS® did not violate Article 12, by actually publishing REALTOR® B's listing on his Web site REALTOR® A was not linking, but instead was advertising (by copying, as opposed to simply providing a link) without authority. In their findings of fact, the Hearing Panel also noted that even if REALTOR® B's clients might not object to such advertising, the lack of objection could not be assumed and would not relieve REALTOR® A of the obligation to obtain REALTOR® B's specific authority and consent to advertise her listings.

The Hearing Panel found REALTOR® A in violation of Article 12 of the Code of Ethics.

## **Case #12-17: Use of Deceptive Domain Name/URL ("Uniform Resource Locator") (Adopted May, 2001.)**

REALTOR® X, a principal broker in the firm XYZ, was technologically savvy and constantly looking for ways to use the Internet to promote his firm and drive additional traffic to his Web site.

Being an early adapter to the Internet, he had registered, but not used, domain names that incorporated or played on the names of many of his competitors and their firms, including ABC, REALTORS®.

REALTOR® X and his information technology staff concluded that one way to drive traffic to the firm's website would be to take advantage of the search engines commonly used by potential buyers and sellers. They realized that when potential buyers or sellers searched on key words like "real estate" or "REALTORS®" or on similar words, lists of domain names would appear, and that when consumers searched the Internet for ABC, REALTORS®, one of the domain names that might appear would be REALTOR® X's domain name, abcREALTORS.com.

REALTOR® X decided to take advantage of the domain names that he had previously registered, and pointed several that used, in various ways, the names of his competitors, including "abcREALTORS.com," to his site.

In a matter of days, REALTOR® X learned that he had been charged with a violation of Article 12 of the Code of Ethics by REALTOR® A, the owner of ABC, REALTORS®, alleging that his (REALTOR® X's) use of the domain name "abcREALTORS.com" presented a false picture to potential buyers and sellers and others on the Internet.

At the hearing, REALTOR® X defended himself indicating that, in his opinion, use of a domain name was not advertising or a "representation" to the public but simply a convenient way for Internet users to find relevant websites. Moreover, "When websurfers reach my home page, there is no question that it is my site since I clearly show XYZ's name and our status as REALTORS®," he continued. "These complaints are just a lot of sour grapes from dinosaurs who aren't keeping up and who don't realize that on the Internet it's 'every man for himself.' "

The Hearing Panel disagreed with REALTOR® X's justification, indicating that while his use of a domain name that employed another firm's name might not be precluded by law or regulation, it did not comply with the Code's higher duty to present a "true picture."

REALTOR® X was found in violation of Article 12, presenting an untrue picture in his representation to the public.



***Provisions of the  
Real Estate License Act***

(Article 6573a and Article 6573a.1. Vernon's Texas Civil Statutes)

As amended by the 77th Legislature, Regular Session  
Effective September 1, 2001 and January 1, 2002

Texas Real Estate Commission  
P.O. Box 12188, Austin, Texas 78711-2188  
(512) 459-6544  
1-800-250-TREC (8732)

This document is available on the TREC web site at  
[www.trec.state.tx.us](http://www.trec.state.tx.us)

**Investigations;  
Suspension or Revocation of License;  
Civil or Criminal Liability**

**SECTION 15.**

(a) The commission may, on its own motion, and shall, on the signed complaint in writing of any person, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesperson. A service contract that a licensee under this Act enters into for services governed by this Act is not a good or service governed by Chapter 39, Business & Commerce Code. The commission may suspend or revoke a license issued under the provisions of this Act or take other disciplinary action authorized by this Act at any time when it has been determined that:

- (1) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence;
- (2) the licensee has procured, or attempted to procure, a real estate license, for the licensee or a salesperson, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license;
- (3) the licensee, when selling, buying, trading, or renting real property in the licensee's own name, engaged in misrepresentation or dishonest or fraudulent action;
- (4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records;
- (5) the licensee has disregarded or violated a provision of this Act;
- (6) the licensee, while performing an act constituting an act of a broker or salesperson, as defined by this Act, has been guilty of:
  - (A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesperson. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase;
  - (B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise;
  - (C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salespersons, advertising, or otherwise;
  - (D) failing to make clear, to all parties to a transaction, which party the licensee is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties;
  - (E) failing within a reasonable time properly to account for or remit money coming into the licensee's possession which belongs to others, or commingling money belonging to others with the licensee's own funds;

- (F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesperson in this state or in any other state for compensation for services as a real estate agent;
- (G) failing to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the licensee agrees to perform services for which a license is required under this Act;
- (H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal;
- (I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice;
- (J) acting in the dual capacity of broker and undisclosed principal in a transaction;
- (K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property;
- (L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or the owner's authorized agent;
- (M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract;
- (N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner, lessor, buyer, or tenant, knowing that the owner, lessor, buyer, or tenant had a written outstanding contract, granting exclusive agency in connection with the transaction to another real estate broker;
- (O) offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on terms other than those authorized by the owner or the owner's authorized agent;
- ⇒(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, the Internet, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent;
- (Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular;
- (R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action;
- (S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act;
- (T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;
- (U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate which is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance;
- (V) conduct which constitutes dishonest dealings, bad faith, or untrustworthiness;
- (W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license;

- (X) disregarding or violating a provision of this Act;
  - (Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;
  - (Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or
  - (AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry, including directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee;
- (7) the licensee has failed or refused on demand to produce a document, book, or record in the licensee's possession concerning a real estate transaction conducted by the licensee for inspection by the commission or its authorized personnel or representative;
  - (8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission which would indicate a violation of this Act; or
  - (9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into the licensee's possession.
- (b) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.
- (c) Notwithstanding Subsection (b) of this section, a person is not subject to civil liability or criminal prosecution because the person did not inquire about, make a disclosure related to, or release information related to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the U.S. Public Health Service.
- (d) The commission may not investigate under this section a complaint submitted more than four years after the date of the incident involving a real estate broker or salesperson that is the subject of the complaint.
- (e) The commission may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of this Act. If a person fails to comply with a subpoena issued under this subsection, the commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held. The court, if it determines that good cause exists for the issuance of the subpoena, shall order compliance with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as contempt.

Sec. 15A. Repealed by Acts 1989, 71st Leg., ch. 615, §§ 2, eff. Sept. 1, 1989.

# RULES OF THE TEXAS REAL ESTATE COMMISSION

As Revised and in Effect on  
June 1, 2004

Texas Real Estate Commission  
P.O. Box 12188, Austin, Texas 78711-2188  
(512) 459-6544  
1-800-250-TREC (8732)

World Wide Web: <http://www.trec.state.tx.us>

## NOTES

This publication contains the Commission's Rules in effect on June 1, 2004. Changes are published in the *Texas Register* through the Secretary of State's Office. The rules adopted by the Texas Real Estate Commission are located in Title 22 of the Texas Administrative Code. Each rule is identified by a section number in the Code (TAC Section). The rules are also divided into chapters relating to different subjects. For example, Chapter 535 relates to the Provisions of the Real Estate License Act. Lengthy rules may be divided below the subsection level using the following structure:

§ (section)

(a) subsection

(1) paragraph

(A) subparagraph

(i) clause

(l) subclause

For convenience, rules are generally cited to the section level. For example, Subparagraph C, Paragraph 5, Subsection (r) of §535.71, which relates to regulations for providers of approved MCE courses, may be cited as 22 TAC §535.71(r)(5)(C). Unless noted otherwise, the rules in this pamphlet were first effective January 1, 1976. References are provided to the statutory provision the rule interprets or implements. Unless a different source is indicated, references are to Chapters 1101 and 1102, Texas Occupations Code.

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**§535.154. Misleading Advertising.** *[Adopted January 1, 1976; amended March 22, 1978; February [March] 1, 1980; June 24, 1984; June 22, 1990, February 8, 1991; January 1, 1997; May 27, 1998; March 15, 1999; and October 1, 2000; Ref: §15(a)(6)(P)]*

(a) For the purposes of this section, an "advertisement" is a written or oral statement which induces or attempts to induce a member of the public to use the services of a real estate licensee. The term "advertisement" includes, but is not limited to all publications, radio or television broadcasts, all electronic media including Email and the Internet, business stationary, business cards, signs and billboards. The provisions of this section apply to all advertisements by a real estate licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement. Provided, however, a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services is not an advertisement for the purposes of this section.

(b) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(c) A broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name in which the person is licensed. Licensees may not use the name of a salesperson, including an assumed name, in advertisements unless the sponsoring broker's name or assumed name also appears. If the commission is notified of a licensee's use of an assumed name which contains only the name of a salesperson, including an assumed name, the commission shall notify the licensee, and the licensee's sponsoring broker, if any, that use of the name alone in advertising is grounds for disciplinary action under this section.

(d) In an advertisement placed by a licensee that does not readily identify the licensee as a real estate agent, the advertisement must include an additional designation such as "agent," "broker" or a trade association name which serves clearly to identify the advertiser as a real estate agent.

(e) Because salespersons may lawfully engage in brokerage activity only when they are associated with, and acting for, a broker, a listing may be solicited and accepted only in a broker's name. Advertisements concerning a broker's listings must include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker may also be included in the advertisement, but in no case shall a broker or salesperson place an advertisement which in any way implies that the salesperson is the person responsible for the operation of a real estate brokerage.

(f) A corporation or limited liability company licensed as a real estate broker may do business in the name in which it was chartered or registered by the Secretary of State.

(g) A licensee's advertising must not cause a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage, provided that an advertisement of a trade, business, or assumed name does not constitute a holding out that a specific person is engaged in real estate brokerage.

(h) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies as a real estate broker or agent the person publishing the advertisement. Advertisements in which the required language is not clear and conspicuous shall be deemed by the commission to be deceptive and likely to mislead the public for the purposes of Texas Civil Statutes, Article 6573a (the Act), §15 (a)(6)(P). The commission shall consider language as clear and conspicuous if it is in at least the same size of type or print as the largest telephone number in the advertisement, or it otherwise clearly and conspicuously identifies as a real estate broker or agent the person who published it. The commission shall consider advertisements not to be in compliance with this subsection if the required language is in print or type so small that it cannot be easily read from the street or sidewalk. This subsection does not apply to signs placed on real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the provisions of the Act regarding advertising.

(i) A real estate licensee placing an advertisement on the Internet, electronic bulletin board, or similar mechanism must include on each page on which the licensee's advertisement appears any information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(j) A real estate licensee placing an advertisement by using any electronic communication, including but not limited to E-mail and E-mail discussion groups, must include in the communication and in any attachment which is an advertisement the information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a) (6)(P) of the Act.

(k) An advertisement containing an offer to rebate to a principal a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(l) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.

## ***Texas Deceptive Trade Practices Consumer Protection Act***

Advertising the property with no intention of selling the property as advertised.

Representing that something is new or original when it is not or that it is a particular quality when it is not

### ***INCORRECT***

New Roof  
New Paint  
New Carpet

### ***CORRECT***

Shingles replaced 5/2000  
Inside painted 2/2000  
Carpet replaced 1/2000

This not only tells the buyer how long ago this has been done but also protects you for DTPA lawsuit.

Quoting square footage from a source know to be incorrect. The agent can be held responsible under DTPA if they know the source they are quoting usually is incorrect. So do not use the Appraisal District as a good source because they are usually incorrect. Always use the work approximately or approx before quoting square footage.

### ***INCORRECT***

1200# per BAD

### ***CORRECT***

Approx 1200# +/- 1200# or acres  
plus or minus 20 acres

# FEDERAL FAIR HOUSING LAWS

It is illegal to discriminate against any person because of race, color, religion, sex, handicap, familial status or national origin.

There are no exemptions when a real estate licensee is involved in a transaction.

Printed advertisements of property for sale or rent cannot include language that indicates a preference, limitation or discrimination with regard to fair housing. All pictorial representations using human models as residents or customers that depict one segment of the population while not including others is discriminatory. The media used to advertise property or real estate services cannot target one population to the exclusion of others.

## **INCORRECT WORDING**

Great family home  
Ladies only  
Men only  
No handicapped  
No children  
Adult's community  
Catholic  
Integrated  
Near temple  
Empty nesters  
Able-bodied  
Agile  
Bachelor  
Couples only  
Gentleman's ranch  
Healthy only  
No impaired  
Integrated  
Married  
Mature couple  
Mature persons  
Newlyweds  
Physically fit  
Single  
White  
Woman

## **CORRECT WORDING**

Great family room  
Mother-in-law suite  
Walk-in Closet  
Close to shopping, downtown  
Pool  
Great view  
Easy access  
Secluded  
Townhouse  
View  
Den  
Number of bedrooms  
Play area  
Private setting  
Privacy  
School district  
Secluded  
Square footage  
Traditional style

**\*REMEMBER: DESCRIBE THE PROPERTY, NOT THE SELLER, LANDLORD, OR APPROPRIATE BUYERS OR TENANTS.**

## Fair Advertising Practices

All forms of promotion done by the brokerage company and by individual sales associates, including marketing brochures, newspaper advertising, and radio ads, must comply with the nondiscriminatory goals of the Fair Housing Act.

### Tips for Fair Advertising

Even owners of a single-family rental homes aren't exempt from the requirements of fair advertising. To comply:

- Avoid using [language](#) that indicates a bias against a protected class.
- Use consistent language in all the advertising for the same property.
- Describe the attributes of the property, not of the prospects you think would like it. For example, say "a beautiful, fully fenced backyard," not "a great backyard for children."
- Use human models of different ages, sexes, and races in your advertising, if you use models.

Choose advertising media that cover a broad range of markets and don't exclude certain groups

# TRUTH-IN-LENDING REGULATION Z

Understand the laws about Truth-In-Lending Regulation Z and what the advertising should cover.

## TRUTH-IN-LENDING (REGULATION Z)

This act is administered by the Federal Reserve and enforced by the Federal Trade Commission.

It requires that all costs involved in securing a loan (loan origination fees, finders' fees, service charges, discount points, interest charges and mortgage insurance fees or funding fees on VA) be revealed to the borrower in advance with an effective annual percentage rate (APR) clearly specified.

Advertising is strictly regulated by the law and advertisers are required to disclose all of the financing details if one item is disclosed. The price of the house may be advertised without triggering regulation Z if no other financial information is put in the ad, "Trigger terms." Those requiring complete disclosure, include the required down payment; number, amounts and due dates of all payments; and the annual percentage rate.

The Advertising requirements apply to newspapers, television, e-mail, Internet, handbills, flyers, signs or any other printed material.

Advertising terms that would require complete disclose include:

"Only 5% Down"  
"Why pay the landlord when you can own for \$625 a month"  
"30-year financing available"  
"Assume a 9.5% VA loan"

If you include any one of these statements then you must disclose all the financing terms plus the Annual Percentage Rate (APR).

Advertising terms that would not require complete disclose include:

"Only \$125,750"  
"Low Down"  
"Easy monthly payments"  
"9.25% APR loans available"  
"FHA or VA Loans"

## **DISCLOSURES**

What do I have to put a disclosure on and why? All of these may not be necessary on each piece of advertising, use the appropriate ones.

### **FLYERS, INFORMATION SHEETS, MAIL OUTS**

- This is not intended as a solicitation if your property is currently listed with another agent.
- If this home is listed with another agent this is not intended to be a solicitation.
- All information is based on data supplied by others, and its accuracy cannot be guaranteed.
- All measurements and figures are approximate. Source of information deemed reliable, but not guaranteed.
- APR rules (see Section IV below)

### **CLOSING COST SHEETS**

- Taxes are based upon the latest available figures, which may vary, by the payment due. All insurance, PMI and prorations are estimates only.

### **NEW HOMES**

- Prices, features and specifications are subject to change without notice.
- Prices, plans specifications and seller contributions are subject to change without notice and may vary in communities.

# NATIONAL ASSOCIATIONS OF REALTORS®

Be sure you know and use the correct usage of the word REALTOR® and the correct Logo for REALTOR®

Membership in the National Association of REALTORS® requires that certain usage of the word REALTOR®, REALTORS®, REALTOR-ASSOCIATE®.

In Microsoft Word to make the ® symbol you hold down the Ctrl & Alt keys at the same time and press the *r*. You will automatically place this symbol ® at that place in you typing. In other word processing programs go in INSERT and look under SYMBOLS, then see if it has a shortcut key.

The correct and preferred usage of REALTORS® is always in capitals with the registration symbol “®” directly after. The upper class letters help distinguish the mark from words of ordinary meaning in the eyes of the reader. The federal registration symbol should be used adjacent to the marks in all advertisements, signs, business cards, letterheads, etc. I would suggest you get in the habit of using REALTOR® and then you will always be correct.

## IMPROPER USE

realtor®  
realtor-associate®  
Realtor  
Realtor-Associate  
realtors  
REALTOR’S  
REALTORS’  
Most Qualified REALTORS®  
Professional REALTOR®  
REALTOR-ASSOCIATE®

## PROPER USE

Preferred  
REALTOR®  
REALTOR-ASSOCIATE®  
Permitted  
Realtor®  
Realtor-Associate®  
REALTORS®’  
REALTORS® with Integrity  
The Family of REALTORS® Number One

Most news media will not use all caps or registration symbols for terms in news or feature articles. This is acceptable in *news or feature articles*.

Realtor, Realtors, Realtor-Associates

However, advertisements should be submitted, and will be printed, with all caps and the registration symbol “®”.

## The Correct Use of the Logo

The block “R” is a collective membership mark which forms the REALTOR® Logo when combined with the REALTOR® mark of width equal to the block “R” width.

Always use the federal registration symbol “®” and the REALTOR® mark in all caps to form the logo. The term REALTOR® appears below the block in avant-garde light typeface. Never reduce the REALTOR® logo to the point where the identifier or registration symbol is

not legible. For more information about using the word REALTOR® and the Logo goes to the information put out by the National Association of REALTORS®.

### **Usage on the Internet and e-mail.**

The term REALTOR®, whether used as part of a domain name or in some other fashion must refer to a member or a member's firm.

The term REALTOR® may not be used with descriptive words or phrases. No Number 1 realtor.com or texasrealtors.org.

For use as a domain name or e-mail address on the Internet the term REALTOR® does not need to be separated from the member's name or firm name with punctuation. For example, both johndoe-realtor.com and johndoerealtor.com would be correct uses of the term as a part of domain names and [jdoe\\*realtors@vsta.com](mailto:jdoe*realtors@vsta.com) and [jdoerealtors@vsta.com](mailto:jdoerealtors@vsta.com) are both correct uses of the term as part of an e-mail address.

The REALTOR® block R logo should not be used as hypertext links at a web site as such uses can suggest an endorsement or recommendation of the linked site by your association. The public has adopted the use of all lower case letters when writing domain names, even those containing trademarks. Therefore, for purposes of domain names only, there is an exception to the rule on capitalization of the term REALTOR® and it may appear in lower case letters.

# **MULTIPLE LISTING SERVICE RULES AND REGULATIONS OF NORTH TEXAS REAL ESTATE INFORMATION SYSTEMS, INC. (NTREIS)**

*Approved December 16, 1998*

*Amended June 9, 1999*

*Amended June 14, 2000*

*Amended October 17, 2001*

## **SECTION 15 - USE OF COPYRIGHTED MLS COMPILATIONS**

- 15.01 Participants shall at all times maintain control over and be responsible for each copy of any MLS Compilation leased to them by NTREIS and shall not distribute copies to persons who are not Subscribers.
- 15.02 Participants and Subscribers shall be permitted to display the MLS Compilation solely to prospective buyers and tenants in their ordinary business activities of attempting to locate ready, willing, and able buyers and tenants for the properties described in said MLS Compilation.
- 15.03 Participants and Subscribers shall not reproduce any MLS Compilation or any portion thereof except in the following limited circumstances:
- a) Participants or Subscribers may reproduce from the MLS Compilation, and distribute to prospective buyers or tenants, a reasonable\* number of single copies of property listing data contained in the MLS Compilation which relate to any properties in which the prospective buyers or tenants are, or may, in the judgment of the Participants or Subscribers be interested. Notwithstanding the foregoing, nothing contained herein will be construed to preclude any Participant from utilizing, displaying, distributing, or reproducing print-outs of reports or other compilations of data pertaining exclusively to properties currently listed for sale or lease with the Participant.

NOTE:\* It is intended that the Participant be permitted to provide prospective buyers with listing data relating to properties which the prospective buyer has a bona fide interest in purchasing or in which the Participant is seeking to promote interest. The term "reasonable", as used in Section 15.03(a), should therefore be construed to permit only limited reproduction of property listing data intended to facilitate the prospective buyers' decision-making process in the consideration of a purchase. Factors which may be considered in deciding whether the reproductions made are consistent with this intent, and thus "reasonable" in number, include, but are not limited to, the total number of listings in the MLS Compilation; how closely the types of properties contained in such listings accord with the prospective buyer's expressed desires and ability to purchase; whether the reproductions were made on a selective

basis; and whether the type of properties contained in the property listing data is consistent with a normal itinerary of properties which would be shown to the prospective buyers.

- b) All MLS information, whether provided in written or printed form, electronically, or in any other form or format, is provided for the exclusive use of the Participants and Subscribers who are authorized to have access to such information. Such information may not be transmitted, retransmitted, or provided in any manner to any unauthorized individual, office or firm. Notwithstanding the foregoing, a Participant or Subscriber acting as agent for an owner(s), buyer(s) or tenant(s), as applicable, in possession of current listing information, "sold" information, "comparables", or statistical information may utilize such information to support an estimate of value of a particular property for such owner(s), buyer (3) or tenant (a). Such information that is necessary to determine the estimate of value may be reproduced and attached to the report as supporting documentation. Any other use of such information is hereby unauthorized and prohibited. A Participant or Subscriber who is not acting as agent for an owner(s), buyer(s) or tenant(s), as applicable, is only authorized to furnish statistical data (without interpretation or opinion) relating to current listing information, "sold" information, or "comparables" to such owner(s), buyer(s) or tenant(s). However, a Participant or Subscriber is not prohibited from presenting appropriate information to an owner(s) in an effort to obtain a listing of such owner's property.
- c) Notwithstanding the foregoing, Participants/Subscribers reserve the on exclusive rights to reproduce, publish, distribute and/or otherwise use the photos of their Listed Properties.

## **SECTION 16 - USE OF MLS INFORMATION**

- 16.01 Use of information from the MLS Compilation of current listing information, from the "Statistical Report" of NTREIS, or from any "sold" or "comparable" report of NTREIS or the MLS for public mass media advertising by a Participant or in other public representations may not be prohibited. However, any print or any non-print forms of advertising or other forms of public representations based in whole or in part on information supplied by NTREIS or the MLS must clearly demonstrate the period of time over which such claims are based and shall include the following or a substantially similar notice: "Based on information from the North Texas Real Estate Information Systems, Inc., for the period (date) through (date)."
- 16.02 Use of information developed by or published by the MLS is strictly limited to the activities authorized under a Participant's licensure or certification as a real estate broker, salesperson, or appraiser and unauthorized uses are prohibited. Nothing contained in the Rules is intended to convey participation or membership or any right of access to information developed by or published by the MLS where access to such information is prohibited by law.

## **SECTION 17 - INTERNET AND DOWNLOADING**

### **INTERNET POLICIES**

- 17.01 NTREIS Participants/Subscribers may display on their consumer accessible web sites aggregated NTREIS MLS active listing information through, at Participants' Subscriber=s option, either downloading and placing the data on their consumer accessible web sites or by framing such information on a NTREIS web site (if such a site is available) subject to the requirements of state law and regulation. Participants/Subscribers may not combine the aggregated NTREIS data with non-NTREIS data nor forward aggregated NTREIS data to other web sites. Participants shall be responsible for the use of NTREIS data on web sites of Subscribers sponsored by that Participant. Subscribers must obtain authorization from their Participant before downloading NTREIS data to the Subscriber=s public web site.
- 17.02 Aggregated NTREIS information shall include no more information than is on the NTREIS Customer Report.
- 17.03 Unless state law requires prior written consent from Listing Participant, Listing Participant's consent for such display is presumed unless a Listing Participant affirmatively notifies NTREIS in writing that the Listing Participant refuses to permit display (either on a blanket or on a listing-by-listing basis). If a Participant refuses on a blanket basis to permit the display of that Participant's listings then that Participant and Subscribers of that company may not frame or display other Participants' NTREIS aggregated listings.
- 17.04 No Participant/Subscriber has the right to give his/her MLS password or access code to third parties nor allow MLS data to be downloaded by third parties without prior NTREIS authorization. Any violation of this section by a Participant, Subscriber, or Ancillary User will subject the violators to loss of MLS services in addition to any other sanctions authorized by these Rules or Policies of the Code of Ethics.
- 17.05 Property listings on consumer accessible web sites that contain NTREIS data must show the Listing Participant's company name and the Listing Agent's name on each property listing in a print size that matches the size of the print in the remarks section or that matches the other print in a listing that does not include remarks.
- 17.06 Only remarks that NTREIS indicates are public remarks are permitted to appear on the Customer Report and therefore on consumer accessible web sites.
- 17.07 Any display of Other Participant's listings must include:
- a) the source of the information being displayed;
  - b) a display of the date of the last update on the web site. Participants must refresh all downloads and refresh and download all data at least once every seven (7) days; and

- c) a display of the NTREIS logo on all “thumbnail” listings (along with an explanation of the meaning of the use of the NTREIS logo).
- 17.08 Notice of NTREIS copyright will be affixed to all photos submitted to NTREIS, which become part of the NTREIS database.
- 17.09 Participants/Subscribers may not edit factual information from the aggregated NTREIS data that appears on their consumer accessible web sites or in the NTREIS Customer Reports.
- 17.10 Consumers accessing a Participant's/Subscriber's public web site that contains NTREIS data must be notified that they may not reproduce or redistribute the NTREIS data since the use of this data is only for people viewing that site.
- 17.11 Only listing statuses A, AO, AK, AC may be shown when available listings are displayed on a Participant's/Subscriber's consumer accessible web site, together with an explanation of what the status symbol means.
- 17.12 Participants/Subscribers shall not download and display aggregated NTREIS sold data onto their consumer accessible websites.
- 17.13 All employees/contractors of Participants/Subscribers who need access to NTREIS data must be given a copy of the Rules.
- 17.14 Participants/Subscribers who contract with employees and/or contractors who will have access to the NTREIS database must incorporate an addendum to any such contract outlining the responsibilities of such employees and/or contractors substantially in a form approved by the Directors.
- 17.15 NTREIS shall specify the available facilities to be used for supporting the downloading activities of Participants/Subscribers and their employees and contractors.

### ***SECTION 18 - COMPUTER MESSAGING***

- 18.01 The message function on the MLS computer will be used exclusively to disseminate to Participants and Subscribers general information relating to Listed Properties or MLS Provider activities. Any defamatory or obscene statements or use, which violates federal, state, or local laws or the rights of any person, is expressly prohibited.

From NTREIS website  
<http://www.ntreis.net/>

## MLS Listings on Your Website



## Required Procedures for Accessing Data

### New Vendors

- 1) A) Complete an Addendum to Access Agreement.  
B) Fax the completed agreement to NTREIS at 214-800-8425.  
C) Please provide a fax # to return the approved agreement.  
D) Click here to print a current version of the [Addendum to Access Agreement](#).
- 2) Once NTREIS receives and approves the agreement, the approved agreement will be faxed back to the fax # provided on the fax cover sheet.
- 3) Contact Jim Harrison at [Jim@ntreis.net](mailto:Jim@ntreis.net) to request a Data Licensing Agreement. Once you have completed the Agreement, mail it to:  
NTREIS  
Attn: Jim Harrison  
1950 Stemmons Freeway, Ste 3018  
Dallas, TX 75207
- 4) When Jim Harrison receives and approves the Agreement, NTREIS will notify you of the approval and mail back the final agreement.
- 5) Once you are notified of the approved Data Licensing Agreement, contact Daniel Price at [Daniel@ntreis.net](mailto:Daniel@ntreis.net) for information about receiving data.

### Existing Vendors

- 1) A) Complete an Addendum to Access Agreement.  
B) Fax the completed agreement to NTREIS at 214-800-8425.  
C) Please provide a fax # to return the approved agreement.  
D) Click here to print a current version of the [Addendum to Access Agreement](#).
- 2) Once NTREIS receives and approves the agreement, the approved agreement will be faxed back to the fax # provided on the fax cover sheet.

[Addendum to Access Agreement](#)

[List of Approved Fields](#)

For presentation on NTREIS Participant/Subscribers' web site.

[NTREIS Rules and Regulations Section 16 & 17](#)

[Key Terms](#)

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### **Agents/Brokers**

[Options to put the MLS on your web site](#)

[Addendum to Access Agreement](#)

[How do I sign up for NTREIS Translator?](#)

[Addendum to Access Immobil Agreement](#)

Broker Signature Required for Free NTREIS Translator (Immobel) Web Portal

[List of Authorized Vendors](#)

[Form to opt-out](#)

A form to opt-out of authorizing your listings to be included on other Participant/Subscribers' web sites.

[List of Participant/Subscribers who have opted out](#)

Participant/Subscribers who have opted out of authorizing their listings to show on NTREIS Participant/Subscribers' publicly accessible web sites.

[Framing NTREIS RAPMLS](#) (Brokers Only)

[NTREIS Rules and Regulations Section 16 & 17](#)

[What To Consider When Buying A Website](#) (Realty Times Article)

[Key Terms](#)

# Advertising FAQs Taken from TAR website

<http://www.texasrealtors.com/>

Select from the topics listed on the right. One or more questions are answered on each selection.

All the FAQs were updated through Jan. 1, 2002. If a later date appears next to a question, that information is current as of the given date. These FAQs are intended to be general answers to the questions asked.

## Firm name in advertisements

**Must the name of my firm be included in an advertisement in the newspaper or on my Web site?**

NAR's Code of Ethics requires that the name of the firm be included in advertisements of listed properties. It is prudent to include the name of the firm in all advertisements. Furthermore, TREC rules prohibit an advertisement, which in any way implies that a salesperson is the person responsible for the operation of a real estate brokerage. The broker's name should also be included in any advertisement to avoid violating this rule.

**Is my Internet Web site an advertisement?**

Generally, yes. The Internet is a medium in which merchants, professionals, vendors, etc. place notices and information designed to call the matter to public attention. Most "commercial" Web Sites are designed to solicit and attract business.

**My Web site is designed in such a way that persons accessing the Web site can communicate and transact business with my firm directly from the Web site. Is my Web site still considered to be an advertisement?**

Generally, yes. It is the electronic transmission or e-mail that is the communication vehicle through which the business is conducted. The information on the Web site is an advertisement.

## License information required in advertisements

**The Real Estate License Act requires a licensee to identify himself as a real estate broker or salesperson in any advertisement the licensee publishes. Briefly, what license-identification information must be included?**

The person causing the advertisement to be published must identify himself as a real estate broker or salesperson in the advertisement. Use of the term *REALTOR*<sup>®</sup> by *REALTOR*<sup>®</sup> members is sufficient to identify oneself as a broker or salesperson.

For example, *Available, Jacob McCandles and Company, Call Rooster Cogburn, 512-522-2222* does not comply. However, *Available; Jacob McCandles and Company, Real Estate Brokers; Call Rooster Cogburn, Salesperson; 512-522-2222* does comply.

### **Must the license identification information be on each page of my Web Site?**

Generally, yes.

### **If I do not identify any individual associate in an advertisement but only name the firm, must the license identification information be included?**

If the name of the firm (regardless of the type of entity) does not readily identify the firm as a real estate brokerage firm, there must be an additional designation that identifies the firm as a real estate brokerage firm. For example, *Available, Wil Anderson and Company, 512-522-2222* does not comply but, *Available, Wil Anderson and Company, REALTORS*<sup>®</sup>, 512-522-2222 complies.

### **If a name of a firm includes phrases such as *realty, real estate, or management*, is that sufficient to identify the firm as a real estate brokerage firm?**

No, generally those terms are not sufficient.

### **Along those same lines, would the following designations in advertisements be sufficient?**

Yes: For Sale, Branigan Real Estate Brokerage Firm, 555-5555

Yes: For Sale, John Elder and Company, REALTORS<sup>®</sup>, 772-2828

No: For Sale, Cahill Realty, 523-2323

No: For Sale, Rio Bravo Real Estate, 444-4343

No: For Sale, Rio Lobo Management, 222-2727

No: For Sale, Guns Donavon and Company, 667-6677

### **If the advertisement identifies the firm as a real estate brokerage firm and names individual associates in the advertisement as well, must I designate each associate as a salesperson or broker?**

It is prudent to identify each and every person named in the advertisement as a salesperson or broker to avoid confusion, but is not required as long as the person or firm causing the advertisement to be published is identified in the advertisement and is as a real estate broker or salesperson.

**May I have a global disclosure at the top or bottom of each page that says all persons and firms named in this advertisement are licensed brokers or salespersons?**

Yes, assuming all individuals named in the advertisement are licensed. Be careful not to include the names of any unlicensed persons in such an advertisement.

**May I use abbreviations to identify a person as a licensee?**

Yes, if the general public commonly knows the meaning of the abbreviation. For example, *brkr.* or *agt.* are probably sufficient.

**Do the same rules that require the license-identification information to be included in an advertisement and require the name of the broker or firm to be an advertisement apply to classified ads as well?**

Yes.

**Do these same rules apply to commercial real estate brokers and salespeople as well?**

Yes.

## **Use of the term *REALTOR*<sup>®</sup> in advertisements**

**As a *REALTOR*<sup>®</sup> I'm entitled to use the term *REALTOR*<sup>®</sup> in my ads, but I understand there are certain requirements on how the term may appear. Can you elaborate?**

Only members of the *REALTOR*<sup>®</sup> association may use the term *REALTOR*<sup>®</sup>. *REALTOR*<sup>®</sup> members may use the term *REALTOR*<sup>®</sup> only in connection with their real estate business. One may use the term *REALTOR*<sup>®</sup> only descriptively. One may not use the term *REALTOR*<sup>®</sup> as part of one's name, but may use that term to describe the firm. The term *REALTOR*<sup>®</sup> should always appear in capital letters and the federal registration symbol, ®, should follow. Punctuation should be used to separate the firm name from the term *REALTOR*<sup>®</sup>. Do not hyphenate or abbreviate the term *REALTOR*<sup>®</sup>. Do not use descriptive words to modify the term *REALTOR*<sup>®</sup> (for example, *Professional REALTOR*<sup>®</sup>, *Commercial REALTORS*<sup>®</sup>, etc.).

**May I use the term *REALTOR*<sup>®</sup> in the name of my firm?**

No. A *REALTOR*<sup>®</sup> may use the term *REALTOR*<sup>®</sup> only descriptively. The term *REALTOR*<sup>®</sup> may not be used a part of firm's name, but may be used to describe that the firm is a *REALTOR*<sup>®</sup> firm. For example, *Alamo REALTORS*<sup>®</sup>, *Inc.* is not a proper use of the term, but *Alamo Real Estate, Inc.*, *REALTORS*<sup>®</sup> is a proper use of the term. In the second example,

the term *REALTOR*® is not part of the name and is used descriptively, as evidenced by the comma and the placement of the term *Inc.*

### **May I use the term *REALTOR*® in my domain name?**

NAR's Legal Affairs Department answered this question as follows: "The term *REALTOR*®, whether used on the Internet, as part of the domain name, or in any other advertisement, must refer to a member or member's company, may not be used with descriptive words or phrases, and should be separated from the member's name or company's name. Uses such as *number1realtor.com*, *firstrealtor.org*, or *realtorproperties.com* are all incorrect. Uses such as *johndoe-realtor.com* or *abcrealty-realtors.com* on the other hand are examples of what could be done with the term as part of a domain name."

## **Listings on a Web site**

### **Do any of the regulations impose any requirements on the amount of time that I must remove a listing from a Web Site once it has sold?**

The Real Estate License Act and NAR's Code of Ethics prohibit any misleading or false advertisements. If a real estate licensee advertises listings on the Internet and fails to remove the listings within a reasonable period of time after the listing sells, the licensee could be accused of misrepresenting the status of available property in his advertisement. A real estate licensee might be accused of misleading the public to believe that the licensee has an inflated number of listings. Therefore, advertisements on the Internet that concern listed properties should be promptly removed after the listing sells.

## **Loan information in ads**

### **Can you briefly outline the requirements that I must comply with if I put any loan information, such as the monthly payment or interest rate, in an advertisement?**

If the advertisement contains loan information, those terms must be available to a qualified borrower. If a rate of finance charge is set out (interest, points, loan fees), then the words "annual percentage rate (APR)" must be used. The advertisement must state the APR and if the finance charge can increase over the term of the loan. If the advertisement contains information about the down payment, term, payment amount, or finance charge, then all of the following information must be disclosed: down payment, term, APR, and if the rate may be increased. Mentioning only the APR will not trigger the additional disclosures. If specific information other than the APR is mentioned, such as the loan amount, down payment, etc., then the disclosures are triggered.

## Internet advertising checklist

### Is there any checklist that I can use to determine if my Internet advertisements generally comply with the different rules and regulations?

Yes. While this checklist may not be comprehensive, it sets out many compliance issues.

1. Does the advertisement contain any misleading statements or does it tend to create a misleading impression in any manner? It is prudent for someone who did not design the advertisement to scrutinize the advertisement for any potentially misleading statements. Keep in mind that the standard is not whether a statement is true or not, but whether the advertisement "tends to create a misleading impression."
2. Does the advertisement contain the name of the real estate firm or broker?
3. Does the advertisement identify the professional or license status of persons in the advertisements? It might be prudent to identify the license status of all individuals and firms named in the advertisements either specifically or globally. Use of the term *REALTOR*<sup>®</sup> may be used to identify this status.
4. Is a real estate salesperson's name the only name that appears in the advertisement? If so, be sure to include the name of the salesperson's broker.
5. Does the person causing the advertisement to be published have proper authority to publish or submit the advertisement?
6. Is the price quoted the price agreed upon by the owner?
7. If any service is offered as "free of charge," make sure that the service is not tied to or contingent upon any service for which the *REALTOR*<sup>®</sup> is to be compensated.
8. If any inducements are offered, does the advertisement fully describe the conditions for inducements?
9. Is any ownership interest in the property held by the *REALTOR*<sup>®</sup> disclosed?
10. If any loan information is advertised, does the advertisement comply with requirements of Regulation Z?
11. Does the ad inadvertently imply a limitation or preference to a protected class that could potentially violate fair housing laws?
12. Is the specific information related in the advertisement accurate?

## Farming letters

### I am preparing a farming letter to solicit listings in one of the subdivisions where I focus my practice. What is the required disclaimer language concerning properties already listed for sale in that subdivision that I must include in my advertisement?

Standard of Practice 16-2 makes it clear that the Article 16 prohibition against engaging in any practice inconsistent with the agency relationship of another *REALTOR*<sup>®</sup> is not intended to prohibit general announcements to prospective clients even though some of those announcements reach the client of another *REALTOR*<sup>®</sup>. "General" announcements include general advertisements addressed to all possible prospects in a given geographical

area. What is prohibited by Article 16 are solicitations that are not part of a general mailing but are directed toward owners identified through current listings, signs or other sources of information required by Article 3 or MLS rules to be made available to cooperating REALTORS®.

While there is no ethical rule requiring that farming letters that otherwise satisfy the requirements of Standard of Practice 16-2 include a disclaimer, many REALTORS® do include some form of disclaimer to make it clear to owners and their listing brokers that their general solicitation of listings was not intended to solicit the current listings of another REALTOR®. To that extent, such disclaimers promote professionalism and goodwill within the REALTOR® community and the clients they serve.

## Telemarketing

### How do the new do-not-call rules apply to calls made to FSBOs? (Oct. 23, 2003)

There are two instances when a real estate professional would call a FSBO: when seeking a FSBO listing or on behalf of a buyer client. NAR does not see any problem with a buyer's representative contacting a FSBO about a client's potential interest in the property—even if the FSBO's number is listed in the National Do-Not-Call Registry—because the call is not a telephone solicitation by the buyer's representative. Note that the buyer's representative can discuss only his client's interest in the property and not use a purported client's interest as a way to also discuss the possibility of the FSBO listing his property with the buyer's representative.

However, a real estate professional would be prohibited from initiating a telephone call to a FSBO whose number is listed in the National Do-Not-Call Registry in an attempt to obtain a listing. The rules prohibit anyone from making telephone solicitations to telephone numbers that are registered in the database, and a call initiated to obtain the listing falls within that definition.

NAR is seeking clarification from the FCC for calls made to consumers in response to yard signs or newspaper ads that provide a telephone number. Until this clarification is provided, it's advisable to take a conservative approach and check the registry first for the telephone number, and refrain from calling if the number appears on the list.

### Texas' new telemarketing law went into effect last week and created a statewide no-call list. Are REALTORS® required to obtain the no-call list when making cold calls? (April 3, 2002)

The telemarketing bill (HB 472) does not apply to a call made by a real estate licensee if the following conditions are met:

1. The call cannot be made by an automated telephone-dialing system.

2. The solicited transaction cannot be completed until a face-to-face sales presentation by the licensee occurs, and the consumer is not required to pay or authorize payment until after the presentation.
3. The consumer has not informed the licensee that the consumer does not wish to receive calls from the licensee.

Real estate licensees do not have to purchase the no-call list, but under the foregoing exemption, licensees need to maintain their own no-call list. If a consumer tells the licensee not to call, the licensee should place the consumer's name and number on the licensee's internal no-call list and refer to that list when making such calls. Such a procedure is no different from the law prior to the enactment of the new Texas law. Existing law requires that telephone solicitation calls be made only between 9 a.m. and 9 p.m. on weekdays and Saturdays, and noon and 9 p.m. on Sundays.

## Status of listing

**There is a contract pending on one of our firm's listings. The listing agent wants to leave the property as an "active" listing in the MLS because he believes other agents will not be likely to show the listing if its status is changed to "pending" or "pending under option" or any one of the other appropriate status designations in our MLS. Is this an MLS rule violation? (Sept. 25, 2002)**

Most MLS rules require that participants accurately report the status of listings and promptly report changes in that status. It is likely that the listing agent would violate the MLS rules if the pendency of a contract on the property is not timely reported to reflect the correct status designation provided by those rules. While some buyers might be interested in looking at properties that have pending contracts on them, other buyers might not want to consider those properties. It would be unfair to those buyers who are not interested in looking at "pending" properties to mislead them about the true status of the properties advertised in the MLS.

NAR is seeking clarification from the FCC for calls made to consumers in response to yard signs or newspaper ads that provide a telephone number. Until this clarification is provided, it's advisable to take a conservative approach and check the registry first for the telephone number, and refrain from calling if the number appears on the list.

## WEB DEVELOPMENT

**I'm a member of the NATIONAL ASSOCIATION OF REALTORS®. Can I use the word "REALTOR®" as part of my URL?**

NAR has created guidelines that must be followed in using the term "REALTOR®" in the domain name of a member or a member's real estate business.

The term "REALTOR®" or "REALTORS®" must refer to a member or a member's company in the domain name.

"REALTOR®" may not be used with descriptive words or phrases. For example, Number1realtor.com, numberone-realtor.com, chicagorealtors.org, or realtorproperties.com are all incorrect. State and local associations may use the term "REALTOR®" or "REALTORS®" with a geographically descriptive word or phrase, provided that the geographically descriptive word or phrase is consistent with the association's assigned jurisdiction and approved name.

If you use the term as a part of a domain name or e-mail address on the Internet, REALTOR® doesn't need to be separated from the member's name or company name with punctuation. For example, both johndoe-realtor.com and johndoerealtor.com would be correct uses of the term as a part of domain names. Jdoe\*realtors@webnetservices.com and jdoerealtors@webnetservices.com are both correct uses of the term as part of an e-mail address.



The "REALTOR®" "block R" logo REALTOR should not be used as a hypertext link at a Web site. Such a use could suggest an endorsement or recommendation of the linked site by NAR. The only exception would be a link to the NATIONAL ASSOCIATION OF REALTORS® official property listing Web site, [REALTOR.COM](http://REALTOR.COM).

The public has adopted the use of all lower case letters when writing domain names, even those containing trademarks. Therefore, for purposes of domain names and Internet addresses only, the term "REALTOR" may appear in lower case letters.

# Membership Marks Manual

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## Part One – Overview

### I. Introduction

#### A. Trademarks in General

To understand this Manual and the guidelines and policies set forth in the pages which follow, it is NOT necessary for the reader to be familiar with the laws governing the registration and use of trademarks, service marks, certification marks or collective marks. It is NOT necessary for the reader even to be able to distinguish the various types of marks. It will suffice to know what a trademark is; what function it is designed to perform; and for whom.

Trademarks are nothing more than unique terms, symbols or combinations of terms and symbols that communicate some specific message to the public. The term "COKE", for example, is a trademark, which identifies for the public a specific soft drink produced by The Coca-Cola Company. The term "AAMCO" is a service mark which identifies a specific provider of transmission repair services and distinguishes that service provider from all others. Over time, marks like those mentioned become associated with standards of quality or care and the public looks upon such marks as guarantees of repeated quality or care.

History teaches that trademarks not properly protected are soon lost forever. Many of the words we use in our everyday speech were once valuable trademarks and could have been maintained as such had they been properly promoted and protected. The words "escalator" and "aspirin" were once valuable trademarks, but for lack of vigilance, care and public promotion, lost their distinctive protectable qualities and are now words of ordinary use. Preservation of trademarks requires that they be used only in their trademark sense, that they be distinguished from words of ordinary use by the use of capital letters and the registration symbol "®" and that an appropriate program governing their use only in accordance with certain standards of quality or care as to the products or services or qualifications of their users be developed and carefully followed.

#### B. The MARKS: REALTOR®; REALTORS®; REALTOR-ASSOCIATE®; and, the REALTOR® Logo

The National Association is the proud owner of numerous marks including but not limited to the terms REALTOR®, REALTOR-ASSOCIATE®, REALTORS®, the REALTOR® Logo and the Block "R" mark (which may be referred to collectively as the "MARKS").

The Marks are collective membership marks, which serve to identify Members of the National Association and distinguish them from non-members\*. Since 1916, when the unique term REALTOR® was first "coined" or "invented", the public has come to recognize those who use the MARKS as Members of the NATIONAL ASSOCIATION OF REALTORS® and, as such, providers of real estate related services consistent with a strict Code of Ethics and the highest standards of professionalism. Member Boards\*\*, through their use of the MARKS, are recognized as Member organizations.

Members are licensed by the National Association to use one or more of the MARKS in connection with or in reference to themselves and their real estate businesses.

Member Boards are licensed to use the term REALTORS® as part of their name, or in the title of their publication, and to use the REALTOR® Logo in connection with their name. Member Boards may also be licensed to use the Block "R" mark in connection with a Member Board logo.

### **C. Form and Context: Key Considerations**

The primary purpose of this Manual is to explain certain simple but essential policies and guidelines which have been adopted by the National Association to govern and protect the usage of its MARKS. These policies and guidelines include five limitations on the rights of Members and Member Boards to use the MARKS. Without diminishing the importance of geographical, business and membership limitations governing use of the MARKS, Members and Member Boards are encouraged to take special note of those limitations regarding FORM and CONTEXT for these are the key to understanding the various policies and guidelines. The balance of this Manual is devoted to explaining, by example, day-to-day applications of these guidelines and policies which will assist the Member and Member Board in conforming their use of the MARKS to these limitations and to the handling of special exceptions and situations.

As used in this Manual, the word FORM refers to the distinguishing style or appearance of these MARKS with respect to accompanying text, punctuation or symbols (e.g., capitalization, boldface type, italics, spacing, color and use of the federal registration symbol "®"). Proper FORM is necessary for the public to recognize the MARKS for their registered status and significance as more than simply words of ordinary use. The word CONTEXT refers to the meaning or definition likely to be attributed to the MARKS by the public as a result of accompanying wording or the overall setting of the use. The discussion of Proper Use appearing below is designed to assist in evaluating the CONTEXT of any particular use of the Marks.

The guidelines and policies set forth in this Manual are designed to encourage the widest possible consistent use of the MARKS while at the same time preserving and perpetuating their meaning and identifying function. Without such guidelines and policies and the cooperation and assistance of Member Boards and Members everywhere in assuring proper use, the MARKS might become confused in the public mind and lose their protectable, valuable qualities. To remain effective in performing their identifying function, the MARKS must be used consistently and correctly.

### **D. Proper Use: The Public Perspective**

Proper use of the MARKS can never be evaluated solely on the basis of the "intent" of the user but rather must focus predominantly on how each mark as used is likely to be understood by the public. The same evaluation must be undertaken even if the audience is expected to predominately or even exclusively be composed of members. Members and Member Boards are encouraged to assess each use from the perspective of the public. Will the public view the MARK, as it is used, as an indicator of membership? Or will the MARK,

as it is used, be misunderstood as a synonym for "real estate broker" or some other term? It is imperative that Members and Member Boards work together and with the National Association to avoid all uses of the MARKS which may suggest to the public that, without regard to his membership in the National Association, a REALTOR® is simply a provider of real estate related services.

## **II. The Protection Program**

A comprehensive protection program (sometimes referred to in this Manual simply as the "PROGRAM") has been designed to ensure that the MARKS are used only by or in reference to Members and Member Boards of the National Association, and that all uses of the MARKS are proper as to form and context. The objectives of this PROGRAM, as described in this Manual can be achieved only if Members note and bring unauthorized or improper uses of the MARKS to the attention of their Member Board and, in turn, Member Boards take initial action to discourage such uses and notify promptly the National Association in the event further, more formal action is necessary. The success of this PROGRAM requires the vigilance, cooperation and assistance of Member Boards and Members everywhere.

Questions regarding uses of the MARKS which are not addressed in this Manual should be referred to the Trademark Protection Coordinator of the National Association in Chicago.

### **A. Member Responsibilities**

- I. To become familiar with and conform use of the MARKS to the limitations, guidelines and policies set forth in this Manual. NOTE: To ensure such conformity, Members may wish to consult with the National Association's Trademark Protection Coordinator regarding use of the MARKS on letterhead, business cards, signs and other supplies prior to reprinting.
2. To note uses of the MARKS in his market area and report unauthorized or improper uses to his Member Board.

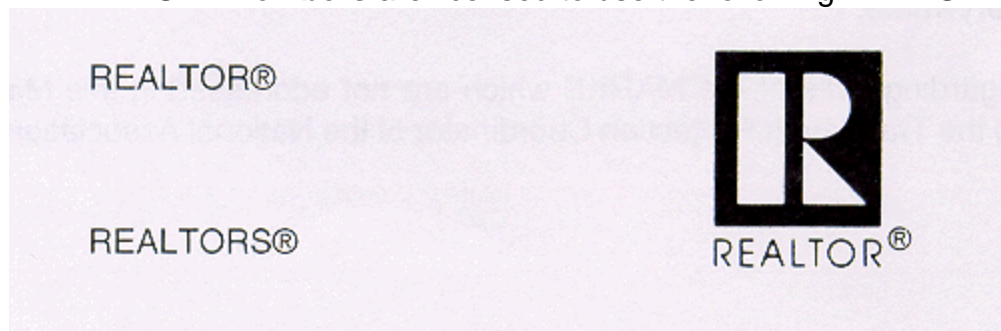
### **B. Member Board Responsibilities**

- I. To become familiar with the limitations, guidelines and policies set forth in this Manual so that guidance and answers to questions from Members, the media and others concerning the MARKS and their proper use can be provided promptly and accurately.
2. To act promptly to cooperate and coordinate with the National Association in any and all efforts to halt or prevent persistent unauthorized or improper use of the MARKS, by taking the appropriate steps outlined in Part Five of this Manual.
3. To provide educational resources and opportunities to Members and the public to assist them in properly using and understanding the MARKS.

## **III. Authority to Use the MARKS: The Licensing Plan**

The MARKS are specifically intended for use by Members and Member Boards and a comprehensive licensing plan has been established to permit and encourage such use. Those individuals who hold REALTOR® or REALTOR-ASSOCIATE® membership in a Member Board are licensed to use one or more of the MARKS in connection with their real estate business. Which MARK or MARKS are licensed is dependent upon the category of membership held by the Member.

**A. REALTOR® Members** are licensed to use the following MARKS:



**B. REALTOR-ASSOCIATE® Members** are licensed to use the following MARKS:

REALTOR-ASSOCIATE®

REALTOR-ASSOCIATE® Members may also use the logo with the REALTOR® identifier in any use which includes the name of the firm or broker with whom the REALTOR-ASSOCIATE® is affiliated.

The license agreement for Members is embodied in one of the select uniform Articles of the model Bylaws each Member Board is required to include in their own Bylaws. This provision incorporates by reference the limitations, guidelines and policies of this Manual, applicable provisions of the National Association's Constitution and Bylaws and other policies for use adopted by the National Association's Board of Directors. (See the National Association's Constitution and Bylaws, Policy Reference File 101, Article V, Sections 2-5 and 7-9.)

**C. Member Boards**

Each Member Board that uses the term REALTORS® as part of its name has executed a written license which permits it to do so. Upon special application and by separate license agreement, Member Boards may become licensed to use the term REALTOR® or the term REALTORS® as part of, or in connection with, the name of a Member Board-operated service without also using the Member Board's full name (see also Part Four, Section IV, E). Also, upon special application and by separate license agreement, Member Boards may become licensed to use the Block "R" mark (see Part Four and Appendix C of this Manual) as part of a Member Board logo which also incorporates the Member Board's full name.

Member Boards wishing to license use of the MARKS under such special circumstances should contact the National Association's Legal Affairs Department for more information.

## **IV. Limitations on Use of the MARKS**

The privilege to use one or more of the MARKS which is conferred upon Members and Member Boards under the licensing plan is NOT without limitations. The geographic, real estate business, membership, form and context limitations described below represent official policy interpretations of the National Association's Constitution and Bylaws regarding use of the MARKS. These limitations, and the guidelines and policies under them, are essential to the orderly, uniform use of the MARKS, to their preservation and promotion, and to establishing each Member Board's obligation and right to maintain and enforce proper use of the MARKS within its assigned jurisdiction.

### **A. Membership Limitation**

The MARKS are reserved by the National Association for use exclusively by its Members and authorized licensees. Accordingly, except as specifically authorized, only individuals who are Members of the National Association, by virtue of holding REALTOR® or REALTOR-ASSOCIATE® membership in a Member Board, are licensed to use one or more of the MARKS.

The criteria for REALTOR® and REALTOR-ASSOCIATE® membership in each local Board are determined by the local Board. Such criteria must not be inconsistent with or more stringent than the 7-Point criteria for REALTOR® membership or the 6-Point criteria for REALTORS® who are not principals and REALTOR-ASSOCIATE® membership, both as promulgated by the National Association. Moreover, because a Member Board may not confer REALTOR® or REALTOR-ASSOCIATE® membership on individuals engaged solely in the business of franchising real estate offices or in other activities not within the currently recognized definition of the term "real estate business," these individuals and their organizations may not be authorized to use the MARKS (see Real Estate Business Limitation below).

A Member's license to use one or more of the MARKS terminates automatically in the event such individual ceases to be a REALTOR® or REALTOR-ASSOCIATE® Member in good standing of a Member Board, for failure to pay dues or any other reason, or in the event his Member Board ceases for any reason to be a Member Board in good standing of the National Association. Although the license terminates automatically along with membership in the Member Board, the Board must still notify the individual that he is no longer authorized to use the MARKS.

Because this limitation requires continuing membership as a condition of the right of the Member to use the MARKS, Members are encouraged not to adopt usages which cannot be readily changed in the event membership ceases. For example, Members should not take phone numbers which correspond to the letters spelling the term REALTOR® or secure license plates which bear that or any of the other MARKS. In the event membership were to be terminated, telephone numbers and license plates cannot be readily changed to reflect the loss of the Member's privilege to use one or more of the MARKS. For the same reason, use of the term REALTOR® as part of the corporate name or business name of any Member is prohibited. This prohibition is necessary to avoid the legal formalities of a

corporate or business name change in the event of a termination, suspension or expulsion from membership in a Member Board. Forethought must be exercised also as regards use of the MARKS on costly, immovable or unalterable business signs.

## **B. Real Estate Business Limitation**

National Association membership is available only to individuals actively engaged in the "real estate business." Members are licensed to use the MARKS only in connection with their real estate businesses, and not in connection with other business activities in which they may also be engaged. For purposes of this limitation, the term "real estate business" includes: real estate brokerage, property management, mortgage financing, real estate appraising, real estate counseling, real estate syndication, land development and building. Thus, Members are not authorized to use the MARKS in connection with activities which do not fall within one or more of these recognized areas, such as insurance brokerage, real estate education or for real estate franchising. (But see Part Two, "Institutional Advertising," for a more complete discussion of franchise and multi-office operations).

If otherwise appropriate and consistent with this Manual, a Member may use the term REALTORS<sup>®</sup> or REALTOR<sup>®</sup> and the REALTOR<sup>®</sup> Logo in connection with the name of his real estate business even though other services not within the definition of "real estate business" are offered under that same name and out of that same office, provided, however, that:

1. Such other services are lawful and the Member is licensed or otherwise legally entitled to offer such services\*\*\*; and
2. Such other services do not, and are not likely to, undermine or diminish public respect for or understanding of the MARKS, other Members, Member Boards or the National Association.\*\*\*\*

Compliance with the real estate business limitation is simply a matter of avoiding use of the MARKS with respect to any business or activity which does not come within the scope of "real estate business" as that term is defined above.

The real estate business limitation applied to Member Boards precludes use of the MARKS in the name of or in connection with Member Board services, activities or functions which are not within the scope of the OBJECTS set forth in Article II of the Constitution of the National Association, or activities for which the Member Board lacks authority under its Bylaws, federal, state or local laws, or governmental agency regulations.

## **C. Geographic Limitation**

The National Association's Constitution and Bylaws place responsibility on the Member Board for enforcement of the Code of Ethics and proper use of the MARKS within its assigned jurisdiction. It is imperative, therefore, that the public, as well as other Members, be able to identify each Member with a specific Member Board. To assure that connection, a Member's right to use the MARKS is limited to the geographic area which comprises the

jurisdiction of the Member Board to which he belongs, except under the following circumstances:

1. A Member is authorized to use the MARKS in connection with place(s) of business located within a state in which the Member does not hold primary membership in any of the local Member Boards if the Member holds primary membership in a local Member Board within a contiguous state and if dues have been paid based upon the licensees at the place(s) of business who are employed by or affiliated as independent contractors with a Member provided such use includes the name and address of a place or places of business within the state; or
2. A Member is authorized to use the MARKS in connection with a place of business located within a state in which the Member does not hold primary membership and for which no dues have been paid based upon the licensees employed by or affiliated as independent contractors, but only if the Member has obtained the written consent of the State Association within whose jurisdiction the place of business is located; or
3. A Member is authorized to use the MARKS in areas outside those provided for herein provided such use of the MARKS includes the name and address of a place of business in connection with which the Member is authorized to use the MARKS.

Similarly, a Member Board's right to use the MARKS is limited to its assigned jurisdiction, except as follows:

1. A Member Board is authorized to use: (a) its name, as licensed, beyond its jurisdiction; and (b) the REALTOR<sup>®</sup> Logo adjacent to that name, beyond its jurisdiction, provided such uses are not misleading or inconsistent as to the jurisdiction assigned to and served by such Member Board or other Member Boards; or
2. A Member Board may use one or more of the MARKS outside its jurisdiction if expressly authorized to do so under a separate license agreement with the National Association.

In most instances, compliance with the geographic limitation by Members is simply achieved by using the Member's business name and office address within the jurisdiction of his Member Board each time the MARKS are used.

#### **D. Context of Use Limitation**

It is vitally important to the preservation of the MARKS that they be recognized consistently by the public as identifiers of Members of the National Association. To assure that the MARKS are not used inadvertently and improperly to denote a vocation or business, Members and Member Boards are licensed to use the terms REALTOR<sup>®</sup>, REALTORS<sup>®</sup> and REALTOR-ASSOCIATE<sup>®</sup> and the REALTOR<sup>®</sup> Logo only in a context in which the MARKS will be understood by the public to denote membership in the National Association.

The guidelines and policies concerning context of use are designed to assist the public in recognizing that the term REALTOR<sup>®</sup> has the following meaning or definition:

REALTOR® - A registered collective membership mark which identifies a real estate professional who is a Member of the NATIONAL ASSOCIATION OF REALTORS® and subscribes to its strict Code of Ethics.

Moreover, the MARKS are registered as "membership" marks and must be promoted as such if the registrations are to be preserved.

Compliance with this context of use limitation is simply determined in the case of written or visible use of the MARKS by substituting the word "member" for the term "REALTOR®." If the meaning or intended message is unchanged and not compromised by such substitutions, the term REALTOR® is appropriately used. If not, the term REALTOR® should be replaced by another phrase such as "real estate broker," "real estate agent," "appraiser," "property manager," or other words, as may be appropriate.

To illustrate the foregoing test, consider the following statement:

"John Doe is a lawyer, REALTOR® and insurance agent."

substituting "member" for "REALTOR®" yields:

"John Doe is a lawyer, member and insurance agent."

The word "member" in the statement clearly does not further the writer's apparent purpose of describing Mr.Doe's professional diversity. It is possible, of course, that the writer did intend to state that Mr.Doe is a Member of the National Association as well as a lawyer and an insurance agent. However, there is a possibility that an uninformed consumer would incorrectly understand the statement to mean that Mr.Doe is a lawyer, real estate broker and insurance agent. Thus, use of the term REALTOR® in the statement is inappropriate.

The same approach points up the problem with letterhead, business cards, signs and ads which include following the name of the brokerage firm notices such as:

John Doe, Inc.  
Builders -- REALTORS® -- Insurers

The likely intent of such notices is to advise would-be customers that the services offered include real estate brokerage. Even if the intent is to indicate membership, there is also a possibility that such usage may cause the public to again view the term REALTORS® inaccurately as a substitute for "real estate agent," rather than an indicator of membership. Thus, use of the term REALTORS® is inappropriate.

This problem can be cured by amending such a notice to read:

John Doe, Inc.  
Builders -- Real Estate Brokers -- Insurers

Of course, if Doe's firm is a Member firm and he wishes to so indicate, the following usage is appropriate:

John Doe, Inc., REALTORS®  
Builders -- Real Estate Brokers -- Insurers

Compliance with this limitation in the case of oral communication requires forethought and continued awareness that the term REALTOR® does not describe a vocation or profession.

For example, when asked what he does for a living, an unthinking Member may answer incorrectly:

"I am a REALTOR®"

Obviously, the speaker does not mean that he makes his living as a "member". Unfortunately, the response makes sense only if the listener assigns to the term REALTOR® the meaning "real estate agent." Thus, by the answer given, the Member has incorrectly used the term REALTOR® and, in the process, may have contributed to a misunderstanding of its meaning. The same is true for statements such as: "John Doe is a licensed REALTOR®", and uses of other modifiers with the MARKS.

A response that is sure to clarify the registered status and special meaning of the term REALTOR® is following:

"I am a real estate broker and a REALTOR®."

If asked to clarify the distinction, the Member can provide an explanation of the fact and nature of membership, including the binding commitment of the Member to the Code of Ethics.

Remember, the objective is to make the public understand that not every real estate broker or professional is a REALTOR® and not every REALTOR® is a real estate broker or professional. A REALTOR® may be an appraiser, a counselor, a property manager or a specialist in some other facet of the real estate business.

Compliance with the context of use limitation requires that use of the terms REALTOR®, REALTORS® and REALTOR-ASSOCIATE® be used only where the context of the use clearly and unambiguously expresses the meaning of the MARKS as indicators of membership in the NATIONAL ASSOCIATION OF REALTORS®.

With regards to the REALTOR® Logo, the context of use limitation requires that the Logo be used in connection with the Member's name or the name of the Member's firm and address. Members and Member Boards are not authorized to use the Logo in the absence of identification of the Member, the Member's firm or a Member Board.

The REALTOR® Logo context of use limitation most commonly arises in connection with items developed by Members or Member Boards to be given away or sold at discount to clients, customers or the public. Compliance with this limitation requires simply that such items, customarily intended to promote business or public service activities by

dissemination to non-members, bear the REALTOR® Logo in close association with the name of the Member or Member Board responsible for such distribution.

This limitation does not preclude the giving away or conferring of items or awards bearing the REALTOR® Logo without other identification so long as the recipient and end-user is a Member Board or Member licensed to use that Mark.

These same principles apply to items bearing the terms REALTOR®, REALTORS® and REALTOR-ASSOCIATE®.

## E. Form of Use Limitation

Members and Member Boards are licensed to use the terms REALTOR®, REALTORS® and REALTOR-ASSOCIATE® and the REALTOR® Logo only in forms which are likely to highlight the registered status, significance and special meaning of those MARKS in the eyes of the public and distinguish them from words of ordinary use and other marks or symbols. The objective of this form of use limitation is to make the terms REALTOR®, REALTORS® and REALTOR-ASSOCIATE® stand out in relation to adjoining print by: (1) the use of capital letters and, where necessary, boldface print or italics; (2) the use of separating punctuation where appropriate; and (3) the use of the federal registration symbol "®" adjacent to each of the terms.

The preferred method of Member and Member Board compliance with this form of use limitation is through use of all capital letters (e.g., REALTOR®, REALTORS® and REALTOR-ASSOCIATE®). However, use by Members of initial capitals and stylized print for the terms REALTOR® and REALTORS® is permitted in connection with the Member's firm name when that Member's firm name appears in the same stylized print, and the federal registration symbol "®" is used. When the preferred all-capital form is used, the federal registration symbol "®" must also be included unless its use is not possible. The **preferred** form would be:

REALTOR®  
REALTORS®  
REALTOR-ASSOCIATE®

**Permitted** (but only when use of the "®" is not possible):

REALTOR  
REALTORS  
REALTOR-ASSOCIATE

**Also Permitted** (but not preferred):

Realtor®  
Realtors®  
Realtor-Associate®

When REALTOR<sup>®</sup>, REALTORS<sup>®</sup> or REALTOR-ASSOCIATE<sup>®</sup> are used in the text of brochures, pamphlets, newsletters or otherwise in the body of written material, all capital letters and the registration symbol "®" should be used in connection with at least the first use in each section of the body of the written material and in connection with each subsequent appearance to the extent practical. Each use must, however, contain initial capital letters in the body of the text. If all of the copy in the body of the written material is in capital letters, the terms REALTOR<sup>®</sup>, REALTORS<sup>®</sup> and REALTOR-ASSOCIATE<sup>®</sup> should be made to stand out by the use of boldface type or by some other means sufficient to distinguish them from words of ordinary use and, in such instances, the registration symbol "®" should be used in connection with every appearance of each MARK. The following excerpt illustrates compliance with this limitation:

It will be of interest to your buyers and sellers alike that as a REALTOR<sup>®</sup> you are bound by the National Association's strict Code of Ethics.

**IT WILL BE OF INTEREST TO YOUR BUYERS AND SELLERS ALIKE THAT AS A REALTOR<sup>®</sup> YOU ARE BOUND BY THE NATIONAL ASSOCIATION'S STRICT CODE OF ETHICS.**

**IT WILL BE OF INTEREST TO YOUR BUYERS AND SELLERS ALIKE THAT AS A REALTOR<sup>®</sup> YOU ARE BOUND BY THE NATIONAL ASSOCIATION'S STRICT CODE OF ETHICS.**

The following definition should appear at the bottom of the page on which the term REALTOR<sup>®</sup> is first used:

REALTOR<sup>®</sup> is a federally registered collective membership mark which identifies a real estate professional who is a Member of the NATIONAL ASSOCIATION OF REALTORS<sup>®</sup> and subscribes to its strict Code of Ethics.

The terms REALTOR<sup>®</sup> and REALTORS<sup>®</sup> may be used in connection with, but not as part of, a corporate or business name provided such terms are separated from the business name by appropriate symbols or punctuation.

**Proper Form**

J.J. Jones, REALTORS<sup>®</sup>  
S.S. Smith -- REALTORS<sup>®</sup>

Separating punctuation should be used even when the term appears on a separate line immediately below the firm name.

**Proper Form**

J.J. Jones and Company,  
REALTORS<sup>®</sup>  
S.S. Smith, Inc.,  
REALTORS<sup>®</sup>

The terms REALTOR® or REALTORS® may not be registered by any Member or Member's firm as part of a business logo. As we discussed previously, it is also impermissible for a firm to incorporate under or register an assumed business name which includes either of these terms.

Possessives should be avoided to the extent possible. Where necessary, possessives are formed as follows:

### **Singular**

REALTORS®'s

REALTOR-ASSOCIATE®'s

### **Plural**

REALTORS®'

REALTOR-ASSOCIATE®'s'

The form of use limitation also applies to the Logo. In this case, however, the form of use requirements deal with spacing, size, color contrast, and positioning, as well as use of the registration symbol "®". Such requirements are designed to assure that through uniform and consistent use the public will continue to recognize the Logo as a distinctive registered mark and not simply some decorative symbol.

### **Form**

The REALTOR® Logo consists of an "R" set in Futura Typeface on a sharply contrasting rectangular background to form a block "R" under which is centered the term REALTOR®. The relative dimensions of the rectangle, the size of the Futura "R" within the rectangle in relation to the rectangle dimensions, the length and typestyle of the term REALTOR® and the space between the term REALTOR® and the rectangle are all important features of the REALTOR® Logo. These features as well as the color identity between the term REALTOR® and the rectangle must be observed.

### **Proper Form**



Used as shown with the block "R" to form the REALTOR® Logo, the term REALTOR® is called an "identifier."

## Improper Form\*\*\*\*\*



The distinctiveness of the REALTOR® Logo is strengthened by use of black and white or sharply contrasting colors and by consistent size relationships and spacing among its component elements.

Approved reproduction proof sheets of the Logo are available from the National Association. To preserve the precise size relationships, spacing, and weight of the component elements, it is preferable that the REALTOR® Logo not be reset locally.

### Contrast

The color contrasts among the three major elements of the REALTOR® Logo (the Block, the stylized "R", and the term REALTOR® with the federal registration symbol "®") should always remain consistent, i.e. the Block underlying the stylized "R" and the term REALTOR® must always be the same color, and must contrast sharply with the stylized "R" and the underlying paper stock or other material.

It may be necessary or desirable at times to use the component elements of the Logo on a dark background. In such cases, it is permissible to reverse the usual color contrast of the REALTOR® Logo to a light Block on a dark background, provided the background is sufficiently dark to insure a high degree of contrast. When the contrasting colors of the Logo are reversed in this way, the usual colors of the Block, the stylized "R" and the term REALTOR® must all be reversed so that both the Block and the term REALTOR® appear in the light color on the dark background.

## Improper Form\_Proper Form



## Color

Color can be a positive element in communicating the REALTOR® Logo to the public. The National Association has adopted as its official colors REALTOR® Blue and REALTOR® Gold and strongly encourages widespread use of these colors in combination as a means of making the appearance of the REALTOR® Logo uniform and prominent.

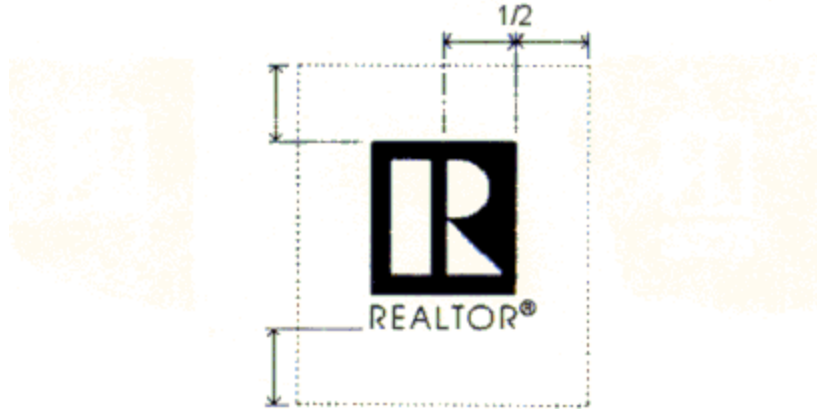
REALTOR® Blue (PMS 293) and REALTOR® Gold (PMS 873) have been standardized by Pantone, Inc. of Moonachie, New Jersey. Any printer can purchase these colors from any licensed Pantone Matching System ink manufacturer. This is preferable to having a printer attempt to independently match the official colors.

Where Members are presently using distinctive colors other than REALTOR® Blue and REALTOR® Gold to identify their firms, the REALTOR® Logo may be printed in any single color selected by such Members provided the paper or the surface of the other substance on which the Logo is to be printed is white or a sharply contrasting single color. For example, if dark green ink is chosen for printing letterhead on white paper, the logo may also appear in dark green.

Where Members are using two color printing for their letterhead or stationery, the darker of the two color choices should be used for printing the REALTOR® Logo. For example, when using dark brown and orange to print letterhead, the REALTOR® Logo should appear in dark brown. *The REALTOR® Logo itself should never be printed in two colors (not including the color of the material upon which the logo is printed) unless blue and gold (preferably REALTOR® Blue and REALTOR® Gold) are used, and then only if the gold is used for the stylized "R" in the Block portion of the Logo. The term REALTOR® or other approved identifier must not appear in gold in a two color image.*

## Spacing

The REALTOR® Logo should be separated from other lettering, designs or emblems by a minimum distance of one-half the width of the Block "R".



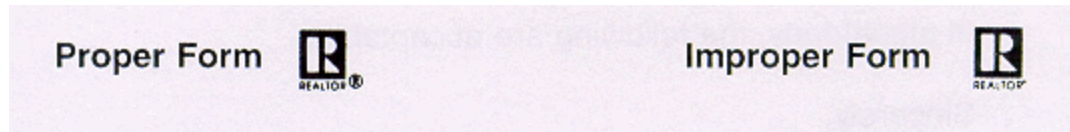
Where the REALTOR® Logo appears alone without other information, e.g., on an office window decal, the minimum space permitted around the Logo is equal to the space between the identifier and the Block "R". The REALTOR® Logo must never be framed or outlined. The edge of the device on which the REALTOR® Logo appears should define the outer border of this space.



## Size

The size to which the REALTOR® Logo may be reduced is often determined by the intended application, i.e., business cards, stationery, etc., and the manner in which the mark is to be reproduced (letterpress, offset, etc.). The REALTOR® Logo must never be reduced to the point where the identifier cannot be read or where the registration symbol

"®" is not legible. The size of the registration symbol, "®", may be increased as necessary to insure its readability.



The REALTOR® Logo is shown below superimposed on a grid to illustrate the proper size relationships among elements. Such a grid illustration should be provided to sign companies, ad agencies and others retained by Members or Member Boards as an aid for large scale applications such as building signs.



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\*References in this publication to "membership in the National Association" should be understood to mean a membership in the family of the National Association, including its Institutes, Societies and Councils, and its State Associations and local Boards, all in accordance with its Constitution and the three-way agreement.

\*\*"Member Boards", as that term is used in this Manual and in the National Association's Constitution and Bylaws, encompasses both State Associations and local Boards or Associations that hold membership in the National Association.

\*\*\*For example, the term REALTOR® may not be used in connection with the name of a real estate business if insurance is being sold by the same business without an appropriate insurance brokerage license.

\*\*\*\*For example, the term REALTOR® may not be used in connection with a real estate business if pornographic literature, liquor or drug paraphernalia were being sold by the same business or out of the same office.

\*\*\*\*\*The REALTOR® Logo and Block "R" are separately registered. The National Association has itself used the Block "R" without an identifier but has not authorized use of

the Block "R" without an approved identifier by Members. However, use of that mark has been authorized in Member Board Logos which have been approved in writing by the National Association. (See Part Four) For a further discussion of approved identifiers, see Appendix C.

## Test Your RESPA Knowledge: Take Our Kickback Quiz

The postponement of the effective date of some of the new Real Estate Settlement Procedures Act regulations from Oct. 7, 1996, to July 31, 1997, gives you a little breathing room to comply with those new regulations. (See "Some RESPA Rules on Hold; NAR Efforts Key in Causing Delay," November 1996, p. 11.)

You must still comply with current RESPA regs regarding relationships your company has with affiliated providers, such as mortgage brokers. A RESPA violation subjects you to a fine of up to \$10,000, imprisonment of up to one year, or both.

How does RESPA play out in real life? Take this quiz to see whether you're following the law or putting your company in legal jeopardy.

1. Can a mortgage company pay for refreshments at my company's open houses?

Yes  No  Maybe

2. Can a settlement company pay my salesperson's commission as an advance before or at closing?

Yes  No  Maybe

3. Can salespeople get a commission from a home warranty company for encouraging a buyer to purchase a home warranty?

Yes  No  Maybe

4. Can a title insurance company rebate a portion of the title insurance premium to my company in exchange for doing business with it?

Yes  No  Maybe

5. If my salespeople use a particular attorney to close their transactions, can they receive a discount from that attorney in a traffic or divorce case involving themselves or a member of their family?

Yes  No  Maybe

6. Can a mortgage company pay for a portion of the cost of home tours or cable advertising?

Yes  No  Maybe

7. Can I reward my salespeople with a better commission split for using my company's affiliated mortgage or settlement company?

Yes  No  Maybe

8. Can a homebuilder require buyers to use a particular settlement company or attorney if the settlement company or attorney provides the builder's services at a discounted cost?

\_\_\_\_\_Yes \_\_\_\_\_No \_\_\_\_\_Maybe

**If you felt uncomfortable answering some of those questions, you have good instincts. RESPA prohibits at least six of the practices, if not all eight. Here's why.**

1. Can a mortgage company pay for refreshments at my company's open houses? Maybe, depending on how the relationship is structured. According to RESPA, a mortgage company can't pay expenses you'd otherwise have to pay as a part of doing business. At the same time, the mortgage company needs to engage in, and isn't prohibited from, marketing and promotional activities. If your company and the mortgage company share the expenses evenly and you both are visible in your marketing efforts, there might be no RESPA violation.

If the mortgage company pays for the refreshments and has them and its materials on a separate table solely for its customers with a sign that says "XYZ Mortgage Company," an argument can be made that you haven't violated RESPA, but it's a risky argument because the U.S. Department of Housing and Urban Development has offered no guidance that supports it.

2. Can a settlement company pay my salesperson's commission as an advance before or at closing? No. RESPA expressly prohibits this practice.

3. Can salespeople get a commission from a home warranty company for encouraging a buyer to purchase a home warranty? No, even though in many areas this is a common practice. Generally, home warranty companies try to get around RESPA by claiming the kickback is an administrative fee. But RESPA clearly prohibits these fees if they're paid as a condition of referring business. There may well be state insurance licensing issues as well.

4. Can a title insurance company rebate a portion of the title insurance premium to my company in exchange for doing business with it? No. Again, RESPA expressly prohibits this practice. Any splitting of fees between service providers is a violation of RESPA unless it's compensation for actual services performed. A salesperson, acting as a salesperson, wouldn't be performing title company services.

RESPA goes even further and looks at the nature of the services being provided. It also looks at whether the other provider, in this case the title company, could perform the services and, if so, at what value. If the value paid to another service provider is higher than the cost the title company would incur in-house, or if the services aren't central to the title company's function, there can still be a RESPA violation.

5. If my salespeople use a particular attorney to close their transactions, can they receive a discount from that attorney in a traffic or divorce case involving themselves or a member of their family? No. Since attorneys are bound by RESPA as providers of residential settlement services, this would be a clear violation because your salespeople would be

getting a thing of value by receiving the discount on the attorney's fees in exchange for past or future business referrals.

6. Can a mortgage company pay for a portion of the cost of home tours or cable advertising? Maybe, depending on how the relationship is structured. Again, a good argument could be made that no violation occurs if the mortgage company pays for the home tour or cable advertising, provided the advertising costs are split evenly and your company and the mortgage company get equal visibility in the ads.

If the mortgage company pays for more than half the cost of the ads, it's probably a RESPA violation unless you can demonstrate that a portion of its payment is reasonable compensation for actual services provided by your salespeople to the mortgage company.

7. Can I reward my salespeople with a better commission split for using my company's affiliated mortgage or settlement company? No. RESPA expressly prohibits this practice. Salespeople can't be compensated by any mortgage or settlement company for referral of business, whether affiliated or not.

8. Can a homebuilder require buyers to use a particular settlement company or attorney if the settlement company or attorney provides the builder's services at a discounted cost? No. Under RESPA, consumers can never be required to use a particular provider of settlement services. It's legal for a builder to offer a discount on settlement services if the discount is passed through to consumers and they still retain the choice to obtain the services elsewhere. Builders can also offer buyers a package of settlement services, supplied by particular providers, at a discount. But they can't require that buyers purchase that package.

Competent attorneys may disagree with some of these conclusions, because under RESPA much is left to interpretation. And none of these situations can be answered with an unequivocal yes. What's important for you to remember is that the fact that someone else is doing the same thing isn't a defense to a charge of violating RESPA. It's up to you to know--and follow--the law.

***John G. "Chip" Dicks III is a partner at Mays & Valentine law firm and legal counsel to the Virginia Association of REALTORS®. You can contact him at 703/734-4385.***

### **Need a Refresher Before You Answer?**

A Real Estate Settlement Procedures Act violation occurs when "a thing of value" is given or received in exchange for a referral. RESPA defines a thing of value as a discount, a rebate, or even the payment of another service provider's expenses.

You don't have to have a formalized arrangement with another service provider to violate RESPA. A flow of referrals can meet the test. Even advance disclosure to consumers of the referral fee doesn't avoid a RESPA violation.

Normal promotional and educational activities not directly conditioned on the referral of business aren't violations. The key test is whether those activities involve defraying

expenses that a service provider in a position to refer business would otherwise incur. If they do, even those activities can be violations.

## **Advertising Guideline Resources**

<b>Collin County Association of REALTORS® (CCAR)</b> <a href="http://www.ccar.net">www.ccar.net</a>	<b>972-618-3800</b>
<b>Texas Real Estate Commission (TREC)</b> <a href="http://www.trec.state.tx.us">www.trec.state.tx.us</a>	<b>1-800-250-8732</b>
<b>Texas Association of REALTORS® (TAR)</b> <a href="http://www.texasrealtors.com">www.texasrealtors.com</a>	<b>1-800-873-9155</b>
<b>National Association of REALTORS® (NAR)</b> <a href="http://www.realtor.org">www.realtor.org</a>	<b>1-800-874-6500</b>
<b>North Texas Real Estate Information Services (NTREIS)</b> <a href="http://www.ntreis.net">www.ntreis.net</a>	<b>214-800-8420</b>

## **City and County Information for Sign Ordinances**

<u><b>City/County Name</b></u>	<u><b>Websites Available</b></u>	<u><b>Contact Number</b></u>
Addison	<a href="http://www.ci.addison.tx.us">www.ci.addison.tx.us</a>	972-450-7001
Allen	<a href="http://www.ci.allen.tx.us">www.ci.allen.tx.us</a>	972-727-0100
Anna		972-924-2409
Blue Ridge		972-752-5791
Carrollton	<a href="http://www.ci.carrollton.tx.us">www.ci.carrollton.tx.us</a>	972-466-3000
Celina		972-382-2121
<b>Collin County</b>	<a href="http://www.co.collin.tx.us">www.co.collin.tx.us</a>	972-424-1460
<b>Cooke County</b>	<a href="http://www.co.cooke.tx.us">www.co.cooke.tx.us</a>	940-668-5420
Coppell	<a href="http://www.ci.coppell.tx.us">www.ci.coppell.tx.us</a>	972-462-0022
Dallas	<a href="http://www.dallascityhall.com">www.dallascityhall.com</a>	214-670-5111
<b>Dallas County</b>	<a href="http://www.dallascounty.org">www.dallascounty.org</a>	214-653-7131
<b>Denton County</b>	<a href="http://www.dentoncounty.com">www.dentoncounty.com</a>	940-349-2000
Fairview	<a href="http://www.fairviewtexas.org/">http://www.fairviewtexas.org/</a>	972-562-0522
Farmers Branch	<a href="http://www.farmersbranch.info">www.farmersbranch.info</a>	972-247-3131
Farmersville	<a href="http://www.farmersvilletx.com/">http://www.farmersvilletx.com/</a>	Metro: 972-784-6093
Flower Mound	<a href="http://www.flower-mound.com">www.flower-mound.com</a>	972-539-7378
Frisco	<a href="http://www.ci.frisco.tx.us">www.ci.frisco.tx.us</a>	972-335-5555
Garland	<a href="http://www.ci.garland.tx.us">www.ci.garland.tx.us</a>	972-205-2000
<b>Grayson County</b>	<a href="http://www.co.grayson.tx.us">www.co.grayson.tx.us</a>	903-813-4243
Irving	<a href="http://www.ci.irving.tx.us">www.ci.irving.tx.us</a>	972-721-2600
Josephine	<a href="http://www.josephinetx.com/">http://www.josephinetx.com/</a>	972-843-8282
Lavon		972-843-4220
Lewisville	<a href="http://www.cityoflewisville.com">www.cityoflewisville.com</a>	972-219-3400
Lowry Crossing	<a href="http://www.lowrycrossingtexas.org/">http://www.lowrycrossingtexas.org/</a>	972-542-8678
Lucas	<a href="http://www.lucastexas.us/new/">http://www.lucastexas.us/new/</a>	972-727-8999
McKinney	<a href="http://www.mckinneytexas.org">www.mckinneytexas.org</a>	972-547-7500

Melissa	<a href="http://www.cityofmelissa.com/">http://www.cityofmelissa.com/</a>	972-838-2338
Murphy	<a href="http://www.murphytx.org/">http://www.murphytx.org/</a>	972-424-6021
Nevada		972-853-0027
New Hope	<a href="http://www.newhopetx.com/">http://www.newhopetx.com/</a>	972-548-2489
Parker		972-442-4105
Plano	<a href="http://www.planotx.org">www.planotx.org</a>	972-941-7000
Princeton		972-736-2416
Prosper	<a href="http://www.prospertx.org/">http://www.prospertx.org/</a>	972-346-2640
Richardson	<a href="http://www.cor.net">www.cor.net</a>	972-744-4100
Royse City	<a href="http://www.roysecity.com/">http://www.roysecity.com/</a>	972-636-2250
Sachse	<a href="http://www.cityofsachse.com/">http://www.cityofsachse.com/</a>	972-495-1212
Saint Paul		972-442-7212
<b>Tarrant County</b>	<a href="http://www.tarrantcounty.com">www.tarrantcounty.com</a>	817-884-1111
The Colony	<a href="http://www.ci.the-colony.tx.us">www.ci.the-colony.tx.us</a>	972-625-1756
Van Alstyne	<a href="http://www.ci.van-alstyne.tx.us/">http://www.ci.van-alstyne.tx.us/</a>	903-482-5426
Westminster		972-924-3891
Weston	<a href="http://www.ci.weston.tx.us/">http://www.ci.weston.tx.us/</a>	Metro: 972-424-1460
Wylie	<a href="http://www.ci.wylie.tx.us/">http://www.ci.wylie.tx.us/</a>	972-442-8100