

ADVERTISING – INTERNET GUIDELINES

Summary: As a general principle, industry members trading in real estate, dealing in mortgages or providing real estate appraisal services should be aware that all regulations and policies respecting advertising apply equally to the Internet. This includes websites, email, and any other potential online identification, representation, promotion or solicitation to the public which is related to licensed real estate brokerage activity. [See Real Estate Act Rules, s.49(a)(b)]

Note: Sections A to C of these guidelines were approved on May 24, 2000. Sections D to I were approved January 21, 2001.

A. DEFINITIONS

As used in these guidelines, the term

"*Active communication*" means the intent of contacting specifically identifiable individuals or groups of individuals.

"*Active solicitation*" means active communication with consumers about real estate services with intent to form a brokerage relationship.

"*Advertising*" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to licensed real estate activity.

"*Licensed brokerage disclosure*" means advertising or messaging that contains the following information:

- a) the brokerage's name as licensed with the Real Estate Council of Alberta or the trade name registered with the Real Estate Council of Alberta,
- b) the city where the brokerage's business office is located, and
- c) the other jurisdictions (e.g. provinces or states) in which the brokerage holds a real estate brokerage licence.

"*Licensed entity*" refers to both licensees and licensed brokerages.

"*Licensee*" means a broker, associate broker and associate.

"*Licensee disclosure*" means advertising or messaging that contains the following information:

- a) the licensee's name as it appears on the licence issued by the Real Estate Council of Alberta,
- b) the name of the brokerage with which the licensee is registered,
- c) the city in which the licensee's office is located, and
- d) the other jurisdictions (e.g. provinces or states) in which the licensee holds a real estate licence.

"*Messaging*" means all forms of communication in any manner and by any means of communication to the public for any purpose, other than advertising, related to licensed real estate activity.

"*Passive communication*" means communication available to the general public with no intent to contact specifically identifiable individuals or groups of individuals.

Licensee and Licensed Brokerage Disclosure

Licensed entities can use the Internet in multiple ways to contact consumers about real estate services and to advertise. More are likely to be invented. "Licensee" and "licensed brokerage" disclosure will help to ensure that online consumers know when they are dealing with a licensed entity, who they are, and where their primary business office is located.

NOTE: for the rest of this section the term "full disclosure" refers to both "licensed brokerage disclosure" and "licensee disclosure."

Regulatory Intent of Online Disclosure Guidelines

All Internet related advertising that consumers can view or experience as a separate unit (for example, email messages or websites) requires full disclosure. At some point during an exchange of direct online messages (of any nature) between consumers and a licensed entity, the licensed entity should make full disclosure in some written form that is understandable and easily available to the recipient prior to providing, or offering to provide, licensable services. The burden of proof of such prior full disclosures falls on the licensed entity when addressing a consumer complaint.

Online Disclosure Guidelines

- *The Web*: Whenever a licensed entity owns a web "page" or controls its content, every viewable page should include (or link to) a full disclosure. A "viewable page" is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.
- *Email, Newsgroups, Discussion Lists, Bulletin Boards*: Such formats should include a full disclosure at the beginning or end of each message.
- *Instant Messages*: Full disclosure is not necessary in this format if the licensed entity provided the written full disclosures via another format or medium (e.g., email or letter) prior to providing, or offering to provide, licensable services.
- *Chat*: Full disclosure prior to providing, or offering to provide, licensable services during the chat session or in text visible on the same web page that contains the chat session if the licensed entity controls the website hosting the chat session.
- *VON (Voice Over Net)*:
 - *Advertising* - "audible" full disclosure prior to the advertising message or disclosure text visible on the same web page that contains the VON session (if applicable).
 - *Messaging* - "audible" full disclosure is not necessary if full written disclosure was provided via another medium (i.e. email, letter) prior to providing, or offering to provide, licensable services.
- *Multimedia Advertising (e.g. web-based, executable email attachments, etc.)*: Full disclosure should be visible as part of the advertising message.

- *Banner Ads*: Should link to a website that has full disclosure, unless the banner ad has said full disclosure.

B. ACTIVE SOLICITATION

Licensed entities can contact consumers about real estate services in multiple ways on the Internet, any of which could reasonably be considered "*active solicitation*."

Regulatory "Intent" of Online Active Solicitation Guidelines

Active solicitation occurs whenever a licensed entity establishes active online communication with a consumer about real estate services with the intent of forming a brokerage relationship. Active online communication methods include email, chat, VON, instant messaging, and any other form of contact with specifically identifiable individuals or groups of individuals. Other forms of online communications (such as Web pages, discussion lists, bulletin board, banner ads, and multimedia advertising) are usually not considered "active solicitation" because they are forms of "passive" communication.

Online Active Solicitation Guidelines

The provisions of the *Real Estate Act* and Rules that relate to provision of information, marketing, advertising and communicating with customers and clients continue to apply to any licensed entity engaged in "active solicitation" using the Internet or any time a licensee establishes active online communication with consumers about real estate or mortgage brokerage services with the intent of forming a brokerage relationship.

C. ONLINE LISTING INFORMATION

Regulatory "Intent" of Guidelines for Listings Advertised Online

The primary issues with online listing information relate to "currency" of online information (i.e. keeping all online sources of the same listing information current and consistent), and advertising of other licensed entity's listing information.

The public should be able to assume that the information provided in the online listing is current and accurate. This principle applies to all forms of advertising and marketing media. For example, online listing information should be consistent with the property description and actual status of the listing. Material changes to the listing status or property description should be updated in a timely manner.

Written permission should be obtained to display listing information from other licensed entities as well as displaying any material changes to the display or nature of said information. Licensed entities should avoid using online means to display listing information that is not directly controlled by them.

Guidelines for Listings Advertised Online

- Online listing information should be consistent with the property description and actual status of the listing. When a licensed entity controls a website, material changes to the listing status or property description authorized by the seller should be updated in a timely manner.

- When a third party online listing service controls the website, licensed entities to whom the listing belongs should submit written requests (e.g. email, online forms, or fax) for updates reflecting material changes to the listing status or property description in a timely manner.
- All listing information should indicate in a readily visible manner the date that the information was last updated.
- Licensed entities should not advertise other licensed entities' listings without written permission and, if given, should not alter the online display or any informational part of the listing without written permission of the listing owner.

D. ADVERTISING AND THE INTERNET

As a general principle, industry members should be aware that all regulations and policies respecting advertising apply equally to the Internet. This includes websites, email, and any other potential online identification, representation, promotion or solicitation to the public which is related to licensed real estate activity.

In accordance with the *Real Estate Act* Rules s.49(a)(b), the name of the brokerage must appear on all advertisements in the course of trading in real estate. This applies to the electronic advertisements carried out by a broker, associate broker or associate. This includes each individual page and/or frame of a website, email messages, email discussion groups, bulletin boards, etc.

Due to the global nature of Internet advertising, adequate contact information with respect to the brokerage should also be included; e.g. the telephone number including area code. Where the brokerage has a company website and/or email address, the links to these should also be included.

The Internet poses additional potential problem areas that require caution on the part of licensees, both individuals and their employing agents.

E. DOMAIN NAMES, EMAIL ADDRESSES, META TAGS

A *domain name* is the Internet address of a website. For example, the Real Estate Council of Alberta domain name is www.reca.ca. *Meta tags* are keywords embedded in a website that help Internet search engines find that website. For example, a licensee might include keywords such as "real estate," "homes," "houses," etc. in their website's meta tags field. When a person enters the word "homes" in the search function of Internet search engines such as Google, websites that contain the word "homes" in their meta tags field will be found. Domain names, email addresses and meta tags should not contain any trademark that the licensee has not been authorized to use. Examples would be the unauthorized use of the terms MLS®, Multiple Listing Service® and REALTOR®, which are all trademarks owned by the Canadian Real Estate Association (CREA).

F. CURRENCY AND ACCURACY OF INFORMATION

Listing information must be kept current and accurate. Licensees must ensure that when listings have expired, they are immediately removed from websites. Similarly, if property information changes during a listing period, the information posted on websites should be changed accordingly.

Licensees should not advertise other brokerage's listings directly on their own website without permission from the listing brokerage, and if this permission is given, licensees should not alter any of the listing information without approval of the listing brokerage. If linking to an outside database of available properties, it should be clear to consumers which listings are the licensee's and which are not.

Industry members must ensure that *licensing information* posted on their website is kept current and accurate. There should be no reference to any licensee who is not currently registered with that brokerage. Where information about unlicensed employees of the brokerage is included, the fact those individuals are not licensed should be clear.

Those who provide *general market information* on their websites should include a notation such as "General market information on this website was last updated on _____."

G. LINKS, DEEP LINKS AND FRAMES

A link is either a graphic or word(s) in a website that, when clicked on, takes an Internet user to the first page (also known as the "home page") of another website. A deep link is a link that takes a user to a page other than the home page (known as an "interior page") of another website. A frame is a design element created when one website captures information from different web pages and displays them graphically within the original browser window. A website is said to be "framed" if one web page appears to be a part of, or embedded in, another page. This is often done in an attempt to retain design elements and links within certain frames on the website, even while the user changes the information presented in another frame. Some website designers also use frames to introduce outside content from other websites, and embed that content within their own website, such as outside mortgage calculators, MLS information or Canada Mortgage and Housing Corporation information.

There are a number of issues relating to linking and framing:

- a) While it is generally agreed that permission is not required to link to certain websites such as government agencies, public libraries etc., licensees must remember that a website and its contents are intellectual property. The "look and feel" of a website, its original content, and the manner in which the information is compiled all give rise to copyright. Licensees should seek permission prior to linking to another website.
- b) Regardless of which website hosts the listings of your local real estate board (e.g. mls.ca, RealtyLink etc.), there are rights of compilation in that listing database. Whether a real estate board, CREA or private company own those rights, licensees should adhere to the guidelines established for linking to that listing information.
- c) Many websites earn advertising revenue based on the number of visits to the home page of the site. By deep linking to an interior page of a website, advertising revenue is potentially lost. Deep linking should never be done without seeking the prior approval of the owner of the website.
- d) Embedding content from another website within a frame of your website can lead to copyright and/or trademark infringement. In effect, when another website is framed, that property is being used. Framing another website should never be done without seeking the prior approval of the owner of the website.

- e) Licensees should make certain that any site to which they link is compatible with the image and views they wish to portray.
- f) Licensees should avoid misrepresenting the relationship between their services and the services offered by a site to which their site is linked. Also, if the link creates the impression that the licensee is participating in, or endorsing the services being offered, that licensee may be assuming responsibility for the performance of those services.
- g) Linking is better done with text than with graphics. Graphics are often subject to copyright or trademark and cannot be used without the permission of their owner.

H. LICENCE JURISDICTION

Licensees must not give the impression that they are licensed in a province or state where they are not. Licensees should clearly indicate on their website that they are licensed in the Province of Alberta.

I. OFFICE POLICIES REGARDING INTERNET USE

As with other forms of advertising, brokers need to be aware of the content of their associate-administered brokerage websites. A prudent broker should approve all websites before they are activated and maintain regular website monitoring to ensure ongoing compliance with Council's advertising guidelines and any additional policies the brokerage may have.

While not a matter directly related to the *Real Estate Act*, it is suggested that brokerages establish email/Internet workplace policies that include usage guidelines, penalties for violations, and mechanisms for addressing complaints.

Similarly, brokerage and licensee websites should also contain a privacy policy statement that informs Internet users of the brokerage's or licensee's intended use of any personal information gathered. The collection and use of all personal information must comply with provincial and federal privacy legislation.