Washington State
Department of Licensing

Real Estate Advertising Guidelines

dol.wa.gov

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The Department of Licensing and the Washington State Real Estate Commission would like to thank the Real Estate Council of Alberta, Canada for their contributions to the development of the Washington State Real Estate Commission Advertising Guidelines.

These guidelines are for real estate industry professionals licensed by the Washington State Department of Licensing (DOL).

Disclaimer

These are guidelines only. This guide does not include every possible advertising situation and it is not legal advice. Please review the appropriate legislation concerning advertising as an industry professional in Washington State before proceeding with any advertising. This includes, but is not limited to, the Real Estate Licensing Law (RCW 18.85), the Real Estate Brokerage Relationships ("Agency") Act (RCW 18.86), the Uniform Regulation of Business and Professions Act (RCW 18.235), and the Washington Administrative Code (WAC 308-124 through 308-124I).

DOL may periodically update this guide. To obtain the current version, please visit the DOL website: **www.dol.wa.gov**.

Industry professionals are encouraged to share these guidelines with third-party service providers who assist them in their advertising and marketing.

We are committed to providing equal access to our services.
For information visit dol.wa.gov/access (TDD/TTY call 711).

WASHINGTON STATE DEPARTMENT OF LICENSING

Introduction

Understanding the law related to real estate broker advertising is critical

No matter what role you play in the real estate industry, advertising is critical to your success! Advertising can be fun and creative and it WILL make the difference between a professional who builds a business portfolio and achieves results in moving property for sellers from an industry professional who just gets by. Advertising is an unavoidable and substantial component of the real estate brokerage industry, provided by all successful real estate firms, brokers and managing brokers.

The requirements of lawful advertising obligate and regulate every real estate licensee, regardless of the license that is held. Brokers, managing brokers, licensed assistants and firms are all accountable for compliance with advertising requirements. Therefore, it is critical that all licensees understand the requirements of lawful advertising within the real estate industry. This guide will provide the fundamental advertising requirements for real estate professionals in Washington State.

Before getting to that, however, it is important for all licensees to know how and to whom they are accountable for compliance with advertising requirements.

A **designated broker** is responsible for all real estate brokerage services provided by any person licensed to the designated broker's firm. A **branch manager** is responsible for all licensed conduct provided by any licensee operating under the branch manager. This is not a passive responsibility. The Licensing Law requires designated brokers and managing brokers and branch managers who are given management authority, to actively "supervise" the conduct of licensees.

With respect to advertising, this means that designated brokers and branch managers should establish a policy and training system within the firm or branch that ensures compliance with

advertising requirements. DOL will not dictate what a firm or branch must do to ensure compliance. DOL recognizes and respects the autonomy and professionalism inherent in the status of designated broker and branch manager. This publication will synthesize advertising requirements. It is up to the professionals charged with supervision and responsibility to create mechanisms that ensure compliance.

With that said, one of the easiest ways for firms to help ensure that their licensed professionals comply with advertising requirements is to have a firm policy and training program that includes information about advertising. DOL expects firms to exercise robust oversight of all licensee advertising. If a real estate licensee uses advertising that is false, deceptive or misleading, DOL may sanction that industry professional and their firm.

Managing Brokers, Brokers, and Licensed Assistants are responsible for personal compliance with all advertising laws and rules and firm policies.

Where are the advertising laws and rules found?

Numerous laws and rules in Washington State and the United States regulate, in one way or another, the rules and requirements associated with real estate brokerage advertising. In Washington, the Real Estate Licensing Law (RCW 18.85), the Real Estate Brokerage Relationships ("Agency") Act (RCW 18.86) and the Washington Administrative Code (WAC 308-124 through 308-124I) address real estate brokerage advertising. Additionally, the Uniform Regulation of Business and Professions Act (RCW 18.235), the Consumer Protection Act (RCW 19.86.020) and the Washington Fair Housing law (RCW 49.60.222) regulate real estate advertising in some respect.

Washington law obligates DOL to require industry professionals to comply with the advertising laws and rules identified above. If an industry professional fails to comply with laws or rules, consequences can include an advisory letter, letter of reprimand, administrative penalty for minor infractions, or referral for criminal or civil charges for major violations. In addition, every industry professional is subject to civil liability if a consumer is damaged by a licensee's failure to comply with advertising requirements. Defense of a claim for civil liability consumes the time and resources necessary for adjudication through a lawsuit. Ensuring that advertising complies with rules and laws protects the professional as an individual, protects the reputation of each firm, protects consumers and protects the image of the industry.

Advertising Basics

What is advertising?

Advertising includes any activity, public notice, or representation an industry professional makes or that someone makes on their behalf to promote the industry professional, their services, or the real property the professional is promoting.

Examples of advertising include but are not limited to:

- ALL printed material (circulars, pamphlets, newspapers, magazines, brochures, hand-outs, flyers, etc.)
- Websites, including websites controlled by the licensee as well as websites that licensee does not control, but on which licensee's advertising is found
- Social media accounts and profiles used to advertise the licensee's business or market real property
- All promotional events, including open houses
- Billboards, television and radio commercials
- Signs (yard signs, sandwich board signs, directional signs, etc.)
- Business cards, letterhead, fax cover sheets, e-mails, text messages, and other promotional materials

Advertising requirements

When you may advertise real property

Industry professionals may only advertise properties for sale or lease, or properties that have been sold or leased, when they have written authorization from the owner or the owner's lawful representative. This means industry professionals cannot place signs or other advertising that designate property as being on the market, such as "for sale," "sold," "for rent," "will develop to suit," etc., without the written consent of the owner of that property or the owner's authorized representative. Membership in a multiple listing service may grant some authority for sharing and promotion of property information but it is a licensee's responsibility to ensure they have sufficient authorization for any advertising of property owned by another. In addition, the licensee should ensure compliance with any applicable multiple listing service rules.

Must include licensed name of firm

All advertising of professional services and any marketing of a client's property, without exception, must include the firm's licensed name. The firm's name must be included, in a clear and conspicuous manner. "Clear and conspicuous" in an advertising statement means the representation or term being used is of such a color, contrast, size, or audibility. This means that the firm name must be presented in a manner so as to be readily noticed and understood. Said differently, a reasonable consumer

should be able to identify the firm based only on the advertisement. Licensees advertising their personally owned real property must only disclose that they hold a real estate license.

- Industry professionals must clearly indicate the name of their firm, as it appears on the firm's license, in all advertising. It is not sufficient to advertise only the franchise name if the firm's licensed name, includes additional words. For example, firm's licensed name is "Big Franchise/ South Sound". All advertisements must include "Big Franchise/South Sound." It would be unlawful to include only "Big Franchise" or "South Sound."
- The licensed firm name is the name that appears on the firm's license. If the firm applied and received a DBA (doing business as), the DBA name must be clearly and conspicuously identified in all forms of advertising.
- The firm name cannot be abbreviated or include abbreviations in advertisements if those abbreviations are not commonly understood. For example, if the name of the brokerage contains the words "Real Estate," industry professionals cannot use "R.E" as an abbreviation. If the name includes "Realty," use of "Rlty" is not appropriate. Commonly understood abbreviations, such as "Inc." or "Corp." may be used. If the firm license has the abbreviations, then those abbreviations can be used.
- Including a firm logo or website address does not qualify as including the firm's licensed name.
- The advertised firm name can be an "assumed name" so long as the firm holds an "assumed name" license for the firm name. For more information, see the section below entitled "Assumed Name Licenses".

Assumed name licenses

Firms may obtain, from DOL, an assumed name license. The assumed name license may be the firm's DBA or it may be the name of a team of broker's licensed to the firm. There is no limit on the number of assumed name licenses a firm may obtain. The assumed name license is owned by the firm. The obligation to include the firm's licensed name, on all advertising, is satisfied by use of any assumed name duly licensed to the firm.

DOL may deny, suspend, or reject an assumed name license application that, in DOL's opinion, is derogatory, similar to another licensed firm name, implies that the firm is a government agency, or that the firm is a non-profit or research organization. A bona fide franchisee may be licensed using the name of the franchisor with the firm name of the franchisee.

An industry professional may use the assumed name in advertising, or use both the complete firm name and assumed name as licensed. It is unlawful, however, to use only part of either the firm name or the assumed name. For example, the firm's originally licensed name is "Big Franchise/South Sound." The firm's assumed name license is "Team Terrific." Advertising can include either licensed name without the other, but advertising could not include, for example, "Big Franchise/Team Terrific".

Inclusion of name in social media and on-line advertising

All Internet related advertising that consumers can view or experience, as a separate unit, (for example, email messages or web pages) require disclosure of the firm's name as licensed *and* disclosure of the broker's or managing broker's name, as licensed. Once an agency relationship has been established with a buyer or seller, the disclosure of licensed firm and broker name is no longer required in this medium.

Whenever a licensee owns a website or controls its content, every viewable page should include disclosure of the firm's and the broker's or managing broker's licensed name. (A "viewable page" is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.) When using such formats as newsgroups, discussion lists or bulletin boards, licensee should include disclosure of the firm's and the broker's or managing broker's licensed name at the beginning or end of each message. When using social media, disclosure of the firm's and the broker's or managing broker's licensed name should be prominently displayed and easily understood and be no more than one click away from the viewable page. Multimedia advertising (e.g. web based, executable e-mail attachments, etc.) and banner ads should disclose the firm's and the broker's or managing broker's licensed name and/or should link to a webpage that has full disclosure that is a single click away from the viewable page.

Advertising shall not be false, deceptive or misleading

Industry professionals shall make no statements known to be false, deceptive or misleading in any of licensee's advertising. Moreover, licensees are not shielded from responsibility for making a false statement because licensee was unaware of the falsity if, by reasonable care or inquiry, licensee could have learned of the falsity. In other words, it is not a defense for a licensee to claim ignorance of falsity if, through reasonable care and inquiry, broker could have discovered the truth.

To determine if advertising is false, deceptive or misleading, DOL considers the literal meaning of the advertisement and the general impression it creates. Truth in advertising goes beyond simple truthfulness; advertising must not mislead or be capable of misleading a reasonable consumer.

When an industry professional makes claims in an advertisement, information substantiating those claims should be readily available to consumers from the firm upon request. Claims may include the firm's or an individual professional's guarantee, performance, accomplishments, service levels, etc. or it may include a representation regarding the condition of seller's property. A broker is entitled to rely on the representations of a seller regarding seller's property and thus, it is always a good idea for a firm to retain proof in its transaction file that seller reviewed and approved all representations regarding the condition of seller's property.

Advertising can be false, deceptive or misleading even if there is no proof a consumer was misled. DOL must show only that the advertisement is capable of misleading a reasonable consumer.

Carelessness, negligence, incompetence, and recklessness can result in false, deceptive or misleading advertising, as can intentional misrepresentations (intentionally untrue statements). Licensees are equally responsible in both cases.

Examples of false, deceptive, or misleading advertising

ABC
Realty

Jennifer Wilson

"VA LOAN SPECIALIST"

jennifer@abcrealty.com • (360) 555-1212

A. Business cards are misleading if industry professionals hold themselves out as specialists in a given area when they do not have the necessary education or experience to advertise such a specialty. If broker's business card includes the statement "VA loan specialist," broker should have specialized training and/or significant experience successfully assisting VA buyers with the purchase of property. If broker's business card says "condo specialist," broker should have specialized training and/or significant experience in condominium transactions.

ABC
Realty

Low commissions always!

Our commissions are based only on the limits allowed by law.

Jennifer Wilson

jennifer@abcrealty.com • (360) 555-1212

B. Advertising is false if broker makes a deliberate misrepresentation with the intention of enticing a party to act such as advertising that broker's commission will be "the rate established by law." Because it is untrue that any commission rate is established by law, it is false advertising for broker to state the commission charged by the broker is established by law. There is nothing unlawful associated with a licensee advertising the rate of commission charged by the licensee, but it is unlawful for broker to state or imply that the commission rate is established by law, rule or industry standard.

$450,000

Gorgeous contemporary home

This four bedroom, three bath home borders a green belt and features modern amenities, including an open concept with a gourmet kitchen, large master bedroom and bathroom with jetted tub and so much more!

C. Advertising for property is deceptive if it says that the property is buffered by a "green belt" when broker knows that the trees, described as a "green belt," are scheduled for removal as part of a construction project. Use of the term "green belt" is intended to create the impression in a consumer's mind, that the trees are protected from being cut. Even though a broker could argue that they intended nothing more than to illustrate that the green trees were present and "belted" the property when buyer viewed the property, it is clear that use of the term "green belt" would deceive the average consumer into believing that the trees were protected and would remain in place long-term.

$475,000

Modern Craftsman

Looking for a classic modern look? This home has it all. Beautiful exterior features and landscaping. The nearly new roof is in great condition.

Leaking vent discovered during inspection and not disclosed in subsequent statements or advertisements.

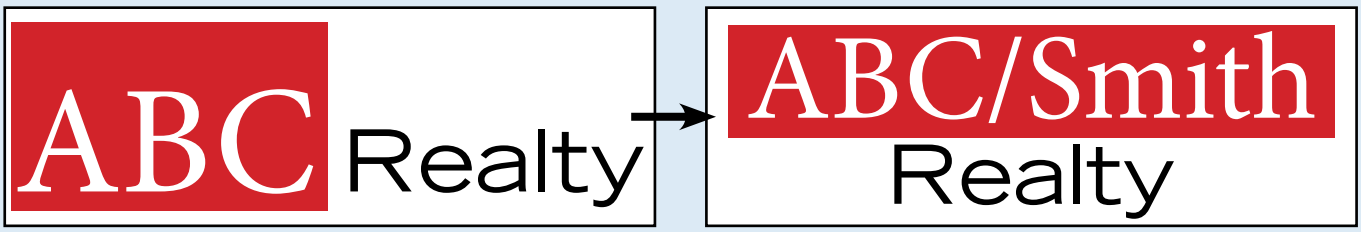
D. Buyer's broker attaches a home inspector's report to an email sent to seller's broker. The inspector's report describes the condition of seller's property, including a roof vent leak that has resulted in mold infested attic insulation and rotten trusses, notwithstanding that the roof is relatively new. Buyer does not purchase the property. Seller's broker chooses not to open the attached inspector's report and says, when advertising the property, "nearly new roof in great condition". Broker's advertisement is false, deceptive and misleading because, with reasonable care and inquiry, broker should have learned the truth regarding the condition of seller's roof. Broker is not permitted to make a false statement because broker chose to avoid knowledge of the truth.

Consider the duration of an advertisement

Industry professionals may avoid problems associated with false, deceptive and misleading advertisements by considering the duration of the intended advertisement. Advertisements in circulation for long periods of time, such as firm signage, business cards and listings that are launched into on-line, secondary marketing sources present special problems for industry professionals. The problem is the facts that support the claims in the advertising may change while the advertisement is still active. Industry professionals should consider whether statements made in the advertisement are likely to change. If so, licensee must have a plan for monitoring the advertisement and removing or modifying the advertisement should the facts supporting the advertisement change. When the facts supporting an advertisement change, the industry professional must make immediate corrections to the advertisement or delete the advertisement in order to avoid false, deceptive and misleading advertising.

Examples

A. Firm's licensed name is ABC Realty. Firm purchases signage for the front of the office advertising ABC REALTY. Firm's owner then takes a partner and they change the licensed name to ABC/Smith Realty. The signage on the firm must change to reflect the newly licensed name of the firm.



B. Broker's business card claims "Most Listings in the MLS". Broker did, in fact, have more listings than any other broker in the MLS at the time the business card was printed. However, the MLS report generated in the subsequent reporting period showed that broker no longer occupied that status. Broker must change the statement on the business card to avoid making a false, deceptive or misleading statement.

$450,000
Gorgeous contemporary home
This four bedroom, three bath home borders a green belt and features modern amenities, including an open concept with a gourmet kitchen, large master bedroom and bathroom with jetted tub and so much more!

C. A listing placed in the MLS is advertised through secondary marketing sources. The listing expires and is not renewed. Seller takes the property off the market. The listing remains in the secondary marketing sources. Broker must take every reasonable step to remove seller's listing from the secondary marketing sources.

Implied endorsements are prohibited

Industry professionals must avoid giving the impression that someone or some entity endorses the professional unless there is written confirmation of the endorsement. Using information that implies an endorsement without actually stating that a certain individual or organization endorses the business or professional could also result in a misrepresentation. Licensees should be certain to use only logos they have permission to use. Using a logo other than one's own could be an improperly implied endorsement, in addition to potential copyright or trademark infringement.

Example

Broker is a huge fan and season ticket holder of the local, professional football team. Based on broker's fond affection for the team, broker includes the team's logo on all of broker's advertising. Use of the football team's logo creates the impression that the football team endorses broker's business. For broker to create that impression in broker's advertising, broker must be able to provide a copy of the football team's written endorsement. If there is no written endorsement from the football team, the team's logo must be removed from broker's advertising.

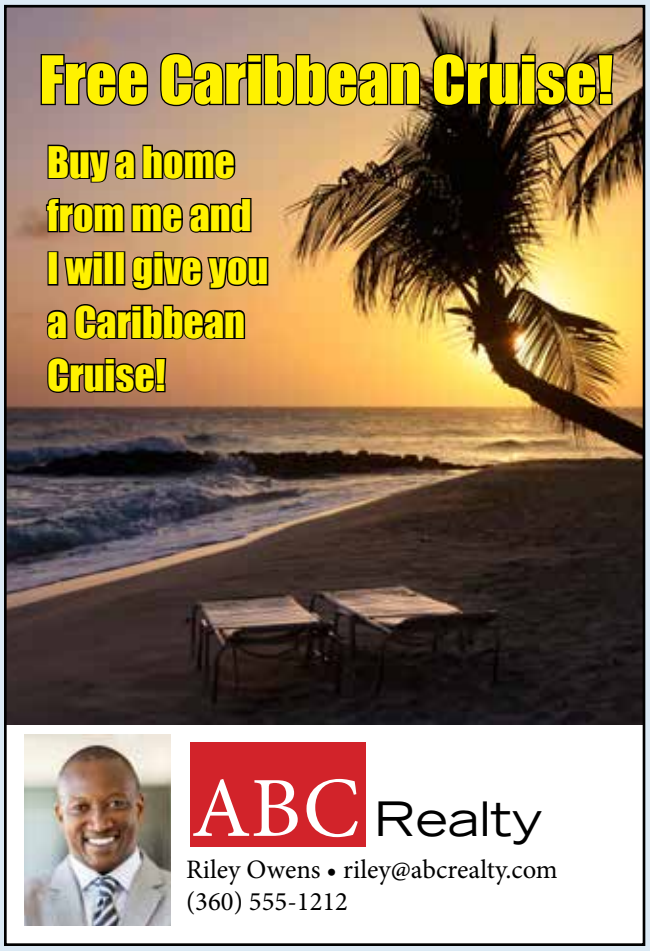
Avoid bait and switch

(Use of "Restrictions" or "terms and conditions apply" does not make a false representation true).

In promoting their business model, licensees will often offer incentives for consumers to hire the licensee. The incentive often creates a catchy headline, but if the headline does not match the program that is offered, then the advertisement is false, deceptive or misleading. After the consumer has agreed to hire the professional, the contract used by the professional must present contract terms that mirror the advertised incentive. Use of the statement "terms and conditions apply" means that the terms and conditions will not materially alter the substance of the offer. If the terms and conditions materially alter the program from the description in the headline, that is considered "bait and switch" and is unlawful. Details of all restrictions or terms and conditions must be available to consumers before the consumer is asked to sign a contract.

Examples

A. Broker advertises "Sell Your Home in Thirty Days or Broker will Buy." Seller hires broker, seller signs broker's contract and listing agreement. Seller's home does not sell in thirty days and seller asks broker to purchase the property. Broker presents a purchase agreement for seller's property with a purchase price that is 50% of the market value of seller's property. Seller objects and broker points to the language in broker's contract indicating that broker will only pay 50% of the value of seller's property. Broker engaged in unlawful "bait and switch."



B. Broker advertises "Buy a home from me and I will give you a Caribbean Cruise." Buyer buys and seeks information regarding the cruise. Broker responds that the promotion was only available to buyers who purchased a home in excess of one million dollars, which buyer did not do. Those program details were never given to buyer. Broker engaged in deceptive advertising without fully informing consumer of the limitations prior to consumer's agreement to utilize broker's services.

It should be further noted that if the program details include reference to industry terminology or abbreviations, those must be explained sufficiently for a consumer to understand the reference. For example, if an incentive is offered only in transactions where there is a "3% BAC" or a "3% SOC," broker will have to prove that the consumer understood the meaning of that reference and understood that a buyer has no control over what the "buyer agent commission" or "selling office commission" is, because those are typically negotiated between seller and listing firm before buyer is introduced to the property.

Copyright concerns

Licensees must avoid using, in all advertising, photographs, images, text, graphs, illustrations and other content that broker does not own or have a license to use. If broker did not take the photograph or create the other representations set forth in advertising, then broker does not have authority to include them in advertising unless broker has obtained specific permission from the photographer, author, creator, etc. Unauthorized use of another person's creative work may result in a civil damages claim.

Fair Housing

It is unlawful for a licensee to discriminate against any person, in the sale or leasing of real property, based on the person's race, color, national origin, religion, disability, sex, familial status, creed, marital status, sexual orientation, gender identity, HIV/AIDS and hepatitis C status and veteran/military status. There are additional classes protected by local ordinances. Fair Housing laws impact advertising by industry professionals. Generally, when advertising a property for sale, licensee should market and describe the features of the property and not the buyer or the tenant who is sought for the property. When marketing services, the industry professional's advertising should present no limitations on the consumer who is sought and, moreover, the industry professional must be prepared to reasonably accommodate any consumer who seeks the advertised services of the industry professional.

Specific Advertising Issues

Teams/Branding

Teams are not firms, but they sometimes create their own administration that, in some ways, mimics the appearance of a firm in order to attract, retain, and service clients. The team concept can lead to confusion with respect to advertising. Advertising a team name or a "brand" must be consistent with all rules of advertising previously discussed. Additionally, the advertising cannot include wording that suggests a legal entity separate from the real estate firm, such as "Inc.," "LLC," or "Corp." or that is commonly understood to reference an entire firm or office, such as "realty," "realtors," "firm," or "real estate."

- All advertising must include the firm's name or the firm's DBA or assumed name as licensed.
- If the team name is licensed as one of the firm's assumed names, then the team may advertise in the licensed assumed name/team name, in the absence of any other licensed firm name.
- If the team name is not a licensed assumed name, then all team advertising must include the firm's licensed name in a clear and conspicuous manner, meaning that a reasonable consumer should be able to clearly identify the licensed firm based only on the advertisement.
- Teams should be aware that when a firm obtains an assumed name license in the team's name, the firm owns the name and the license and the firm is not required to surrender ownership of the name or the license for so long as the firm renews the assumed name license.

To advertise that a potential client will be hiring an entire "team" may be misleading. It must be remembered that based on the Agency Law, RCW 18.86.020, the only team member(s) who represent a seller are the team member(s) who have been appointed as an agent or sub agent of the seller.

Example

Team Terrific consists of four members. One team member obtains a listing and is the only broker identified on the listing agreement as the listing agent. As a result, the only licensees who represent seller are the listing agent and the listing agent's managing broker(s). Other team members involved in the sale of the seller's property may represent the buyer.

Teams must also be careful not to create false impressions in an effort to bolster team statistics. It is not acceptable, for example, for a single team member to be identified on all purchase agreements as the broker representing a party or to be identified in the MLS as the agent who represented all clients of the team unless that team member did actually represent all clients of the team.

Example

Team Terrific has four members, one of whom is the team leader, Beth. Fred, a member of the team, meets and works with a buyer, writes an offer and shepherds the transaction through to closing. Fred is the only team member who worked with the buyers. It would be unlawful for Beth to include her name on the purchase agreement or in the MLS as buyer's agent. Beth may be Fred's delegated managing broker and if so, can be disclosed as such. But, it would be misleading for Beth to be identified as buyer's agent if Beth never worked with the buyer.

Commission policies

Some firms may have a policy with respect to the amount of commissions it charges clients. Industry professionals must not advertise that commission rates are somehow "set" or regulated by a higher authority, such as a governing body or trade association. Commission rates are negotiable between a firm and a client, and to say otherwise is false and misleading. The industry professional is the firm's representative in those negotiations.

A firm may be unwilling to negotiate commission, but the client must understand that is a firm policy. Industry professionals cannot give clients the impression that all firms charge the same, non-negotiable commission.

Performance guarantees

A firm, through its industry professionals, may wish to offer a performance guarantee, such as a commission reduction if the property fails to sell by a specific date. Firms may advertise performance guarantees as long as the advertisements are not false or misleading. Firms are not required to include full particulars of the guarantee in the advertisement, so long as the advertisement and the written guarantee are materially consistent and so long as the actual guarantee is available to consumers before the consumer is asked to enter an agency agreement based on the guarantee. If firm fails to put the performance guarantee in writing, then the guarantee created by the advertised statement will constitute the totality of the guarantee. DOL encourages firms to put all performance guarantees in writing. If there is a link between the performance guarantee and an evaluation of the property's market value, the valuation must reflect the reality of the market. The industry professional should keep the information for the basis of the property's valuation in the transaction file.

Stated experience

Industry professionals often advertise special qualifications, experience, or expertise in specific industry sectors, or in certain geographic areas. Professionals make these representations for the purpose of enticing consumers to do business with the professional, in reliance on this special qualification. When making these claims, industry professionals must ensure they are in a position to demonstrate the related qualification or experience they claim. If an industry professional advertises special qualifications or expertise, the consumer and DOL expect them to perform at that level, and if not, the advertisement could be considered false, deceptive or misleading.

A person holding a managing broker's license may advertise "managing broker" even though the advertiser does not manage any other brokers. The description "managing broker" refers to a category of license held denoting additional training and experience. Similarly, a person claiming a title from another industry, such as military, union membership, athletics, and others, may claim the title earned in that industry, but if the title was previously earned and not currently held, then the advertisement should make that clear. For example, "Major, US Army, retired" or "Former Superior Court Judge" both indicate the status achieved by the advertiser and put the consumer on notice that it was a formerly held, but no longer current.

Material representations and verifiable statements

Statements such as "We sell every home we list in 60 days or less!" is a material representation intended to induce a consumer to select this specific professional. DOL does not prohibit such statements, but upon receipt of a complaint, will hold the advertiser accountable to prove the claims are accurate. Advertisements that are accurate when created, but that become inaccurate with the passage of time, must be withdrawn or modified. It is not a defense against disciplinary action for an advertiser to claim the statement was true when made but became false by the time the consumer relied on it. If an industry professional knowingly makes or sustains a false claim about their credentials or abilities for the purpose of inducing a consumer to do business, that is known as "fraudulent inducement." It is unlawful and will likely be sanctioned by DOL. Moreover, it exposes the licensee to a civil claim by the consumer.

Making statements along the lines of "#1 industry professional" is inherently false, deceptive and misleading because there is no way of knowing the basis or data that could support the statement. If a licensee intends to use such a statement in advertising, the licensee must include enough information in the advertisement to avoid deceiving or misleading the public. A verifiable and quantifiable identification statement in any advertising must provide enough information so that a reasonable member of the public discerns the true meaning of the message.

If broker advertises that the broker "Sold 400 Homes Last Year," broker must be able to prove that broker, personally, was the broker who sold 400 homes last year. This advertisement would be false, deceptive and misleading if broker was merely licensed to a firm that sold 400 homes last year or if broker was part of a team that sold 400 homes last year. The firm or the team could make the representation but it would be unlawful for broker to claim that statistic in a personal advertisement when broker did not personally earn the statistic. Team leaders falsely advertise their accomplishments when they personally claim all the transactions handled by other team members if the team leader was not the professional who actually provided brokerage services to the consumer. It would be appropriate for the team to make claims based on team statistics and data but it is false, deceptive and misleading for an individual team member, even the team leader, to personally claim the accomplishments of the team.

Industry professionals must:

- be able to support and prove claims asserted in advertising using current facts and/or data
- update and refresh advertising so that stated claims remain accurate as facts, statistics and data evolve

An industry professional who wants to refer to him or herself as "#1" needs to include more information in the ad—such as information about the market in which the professional is #1 and information about what makes the industry professional #1 (i.e. most homes sold, most homes listed, most money made). The advertisement also needs to include a timeframe.

Comparative statements in advertising

Advertising that compares the industry professional to competitors or other industry professionals is lawful if, as with all advertising, it is accurate. Industry professionals who use comparative advertising must:

- present measurable facts and figures in a clear, straightforward way
- disclose the source of facts and figures they include
- take no facts or figures out of context
- be able to prove the truth of comparative statements upon request by a consumer or DOL.

A statement like "Team Terrific will get more for your listing than any other broker" is inherently false, deceptive and misleading because there is no way of proving the truth of the statement. There is no comparison showing the sales price achieved by Team Terrific on specific properties as opposed to the sales price achieved by another professional for the same properties in the same market. This statistic is impossible to determine because real estate can only be sold by one professional in the market that existed at the precise time of the sale. This is different from commodity sales. For example, an auto dealer, who sells exactly the same cars at exactly the same time as competitors, could potentially support a claim such as this. Because all real estate is unique, a claim such as this cannot be supported and is, therefore, false, deceptive and misleading.

If Team Terrific says "Team Terrific closed more sales in 2016 than any other member of the Clark County Association of REALTORS" that is a statement with enough specificity that it can be proven.

Achievement awards/association memberships

Many firms, franchises, and industry associations have a system of awards to recognize professional achievements. These awards may recognize sales achievements, service to the industry, service to the community, or years of industry or association affiliation. Examples of these awards include language such as "President's Club," "100% Club," "Million Dollar Club," "REALTOR® of the Year" and "Top Producer Award." The rules for granting these awards may vary greatly between each brokerage, as well as between associations.

DOL accepts that industry professionals may receive this type of recognition and does not prohibit industry professionals from including these awards in advertising. Industry professionals who include awards in their advertising must be able to provide verification of the achievement of the award. As with all advertising, industry professionals must be certain that claimed "awards" are current or that the claim indicates past accomplishment. For example, if the award was for a specific time period, such as the year 2013, then today's advertisement should say, "2013 Franchise Top Producer".

Additionally, it is unlawful for an industry professional to falsely claim membership in an association or to wrongfully use the logo or trademarks of an association to create the impression that licensee is a member of an association. The term "REALTOR" and the capital "R" logo associated with the National Association of REALTORS are both registered trademarks. Use of those trademarks in advertising by non-members is not only a potential violation of the trademarks, it is also false, deceptive and misleading.

Professional designations

An industry professional who is a licensed professional in another profession, such as an engineer or lawyer, may include it in their advertising as long as they are a member in good standing and/or remain licensed. Likewise, real estate professionals may hold a professional designation or certification given to them through a professional or industry association, and they can include those in advertising as long as they are current.

Years of experience

Industry professionals may want to indicate the number of years of experience they have working in real estate, but any such statement must clearly indicate the actual experience gained in those years. For example, five years of experience as an unlicensed assistant in a real estate office plus five years of experience as a licensed real estate broker does not equal 10 years of experience as a broker. Broker may be able to advertise that broker has 10 years of experience working in the industry but broker's advertising is deceptive if it creates the impression, in the mind of a reasonable consumer, that broker has held a real estate broker's license for 10 years.

Advertised inducement or referral fees

It is lawful for an industry professional to advertise that they will give any or all of their compensation to either party in the transaction. Rebating commission back to one of the parties, either in the form of cash or a gift, is nothing more than a reduction in the compensation charged to a consumer and industry professionals are free to reduce their compensation. Any reduction by a broker or managing broker, however, must be approved by the firm before the advertising statement is made. All compensation for real estate brokerage services is payable only to a firm, so it would be false, deceptive or misleading for a broker or managing broker to advertise a return of commission to a consumer if the broker or managing broker did not have permission of the firm to give away compensation belonging to the firm. In addition, if funds or a gift are being given to a buyer who is obtaining financing, then buyer's lender must be made aware of the commission rebate or gift. Some lenders have regulations restricting payment of money or gifts to a buyer.

Advertising a return of money or gifts to a client or other party in the transaction is very different from advertising a willingness to pay a referral fee to an unlicensed, third party who refers a buyer or seller to an industry professional. With respect to payment of referral fees to unlicensed people who are not parties to the transaction, the question is more complicated. The License Law, RCW 18.85, says that a real estate licensee may pay a referral fee to a third party, unlicensed person, so long as payment of the referral fee is not contingent upon receipt of compensation by the licensee or the real estate firm. There is no dollar limit on the referral fee that may be paid. Advertising the referral fee is lawful so long as the advertisement, and subsequent payment, create no contingency on a successful closing.

RESPA, a federal law ("Real Estate Settlement Procedures Act"), indicates that any payment made in direct exchange for a referral, is prohibited. RESPA prohibits settlement service providers from giving or receiving anything of value in exchange for a referral. "Settlement service provider" is a broadly defined term which could include unlicensed, non-professional individuals. HUD, the federal agency charged with enforcement of REPSA, has not indicated whether RESPA prohibits payment of referral fees to unlicensed, non-professional people.

Examples

A. Broker advertises that she will pay $1,000 of her commission toward buyer's closing costs as an inducement to attract buyer clients. The advertisement is lawful so long as: 1) broker's firm approved the advertised payment from the firm's commission; 2) buyer is made aware that buyer's acceptance of the inducement is dependent on buyer's lender's approval of broker's contribution toward payment of buyer's closing costs; and 3) broker actually contributes the promised funds toward payment of buyer's closing costs, assuming such payment is authorized by buyer's lender.

B. Broker advertises that he will give a $500 gift card, after closing, to any person who refers a buyer or seller to him. This advertisement is unlawful because it makes the obligation to give the gift card to an unlicensed person contingent on the broker's receipt of compensation from the referral.

C. Broker advertises that she will give a $50 gift card to any person, if and as soon as they refer a potential buyer or seller to her. This advertisement is lawful under Washington law because the promise of the gift to an unlicensed person is not contingent upon broker's receipt of compensation. Depending on how HUD interprets RESPA, the advertisement may violate RESPA.

D. Broker is a member of a children's hospital charity board and offers to make a $5,000 donation, at closing, to the charity, in the name of any other member who buys or sells from broker. This advertisement is lawful, so long as broker's firm has approved the payment, even though the funds are going to a third party and are contingent upon a successful closing. Because the charitable funds are donated in the name of one of the parties to the transaction, that is tantamount to the broker giving the funds to the party, who in turn, donates the funds to the charity. So long as broker makes the promised donation, this advertisement is lawful.

Seller advertising

DOL does not regulate buyers or sellers. If sellers want to advertise their own property, separate from advertising offered by their listing firm, that is fine. However, if sellers do their own advertising and include the name of their real estate professional, they must also include and clearly indicate the firm's name as licensed.

Guidelines for advertising listings online

The primary issues associated with online listings relate to keeping the online information current and accurate with all marketing sources. Consumers should be able to assume that information they find in an online listing is current and accurate. Online listing information needs to be consistent with the property description and actual status of the listing. Real estate professionals must update material changes to the listing status or property description in a timely manner.

It can be difficult for a broker to effect changes in on-line listings presented by secondary marketing sources. To comply with licensee's obligations for truthful advertising, the licensee must be able to demonstrate that licensee took all reasonable steps to communicate with and persuade the secondary marketing source to update the listing or transaction information. Real estate professionals should also be aware of the terms and conditions of any secondary marketing sources, like the right of the secondary marketing source to distribute the listing to third party websites.

If real estate professionals want to display listing information from other firms, they must have an agreement with the other firm to do so. DOL recommends that real estate professionals do not display listing information from other firms unless they can ensure current and accurate information.

Key points:

- Online listing information should be consistent with the property description and actual status of the listing. When a real estate professional

Example: Twitter
In this tweet, the real estate broker is advertising a listing, an act that requires she disclose her brokerage. As long as the link in the tweet contains the necessary brokerage disclosure, this tweet is acceptable.

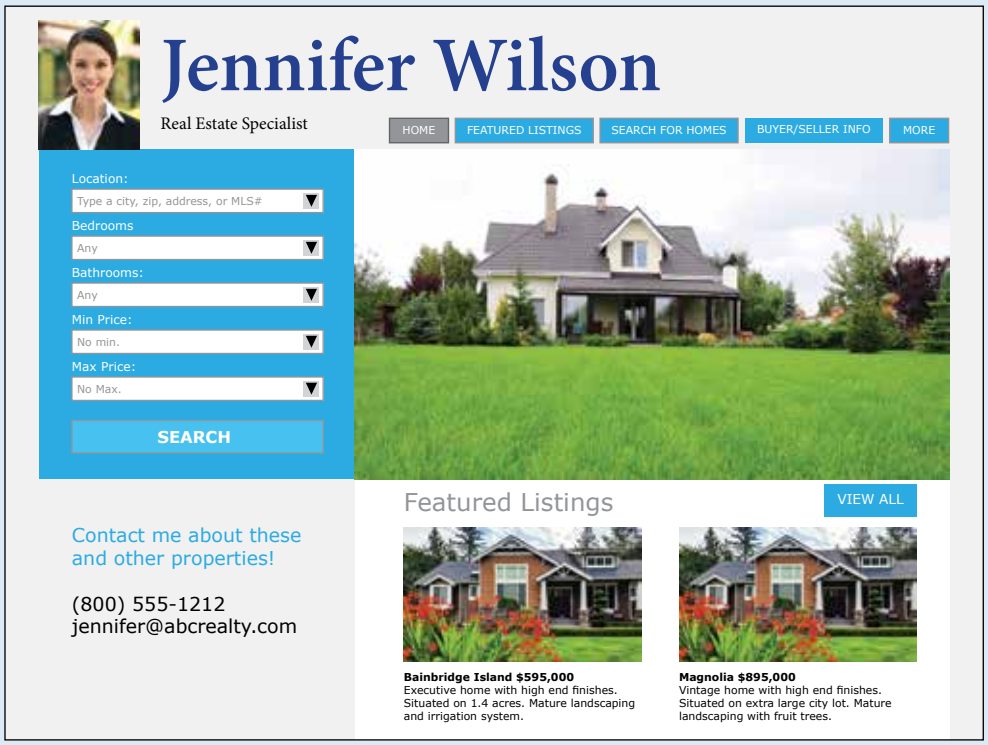
controls a website, they must make updates in a timely manner if there are material changes to the listing status or property description.

- When a real estate professional has a website maintained by a third-party, the professional needs to make sure they submit requests in writing to that third-party in a timely manner if there are updates reflecting material changes to the listing status or property description.
- When a real estate professional authorizes advertisement of a listing by a secondary marketing source, the professional must maintain proof of all efforts to communicate with and to persuade the secondary marketing source to make necessary changes to the listing information in a timely manner.
- As a best practice, real estate professionals should not advertise listings from other firms without written permission and, if given, should not alter the online display or any informational part of the listing without written permission from the listing firm.

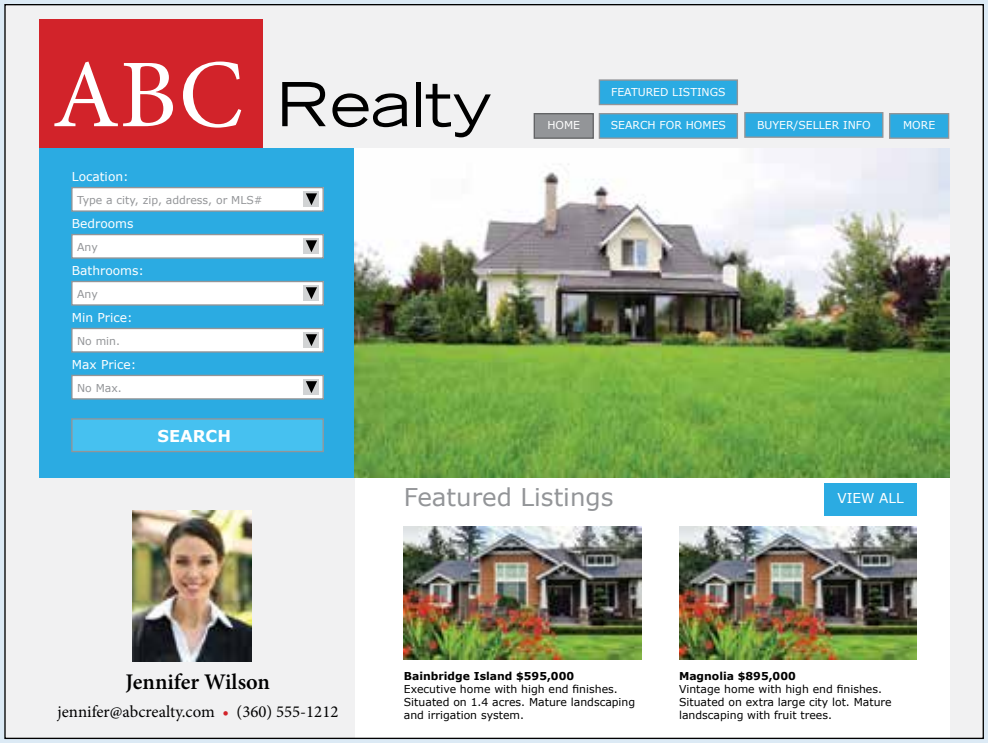
Domain names, email addresses, meta tags and descriptions

A domain name is the Internet address of a website. For example, the DOL domain name (website address) is www.dol.wa.gov. Metatags are descriptive words hidden in a web site's code that search engines use to index the web site. Most sites use common words such as real estate, Washington, city names, homes, houses, etc. Those uses are fine. But some web site owners have also inserted their competitor's names into the metatags, so that when a potential customer searches for their site, the competitor's site will also come up as a match. This should not be done. Courts have ruled that this constitutes trademark infringement. Domain names, email address, and meta tags should not contain any trademark that the industry professional is not authorized to use.

Industry professionals must also avoid registering and using domain names for their websites that include the names of their competitors. For example, if broker's name is John Doe, it would be inappropriate for broker to register under a competitor's name, such as www.BobSmith.com



Example A:
On this broker's website, her name and specialty is prominent at the top, but the brokerage company name is not obvious. Brokerage names must be clearly displayed and prominent on every page within the website. See Example B.



Example B:
The brokerage name is displayed prominently at the top of each page correctly and also shows the licensed broker who represents the properties.

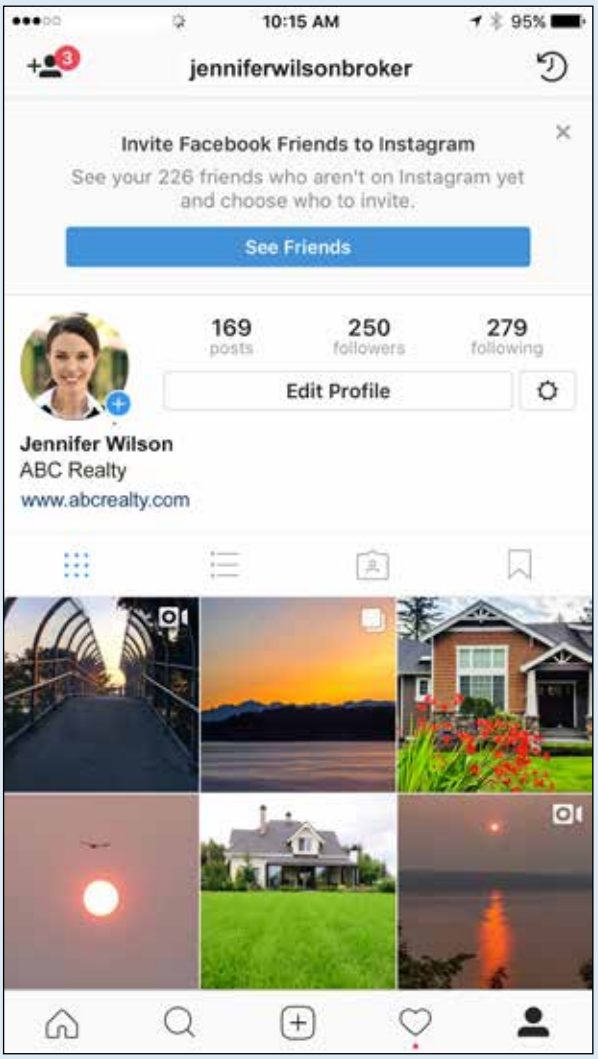
and then advertise services—or redirect Bob Smith's website visitors to John Doe's website.

Industry professionals must not make representations or carry on conduct that misleads or deceives, or is likely to mislead or deceive, consumers. Misleading meta tags or the use of inappropriate domain names could mislead consumers.

Links, deep links and frames

Links are either graphics or words on a webpage that, when a user clicks on them, takes them to another webpage, either within the same site or a different website. Deep links are links that take a user to a webpage other than the homepage of a specific website.

Frames are a design element that are created when one website captures information from another website or webpage and displays it graphically within the original window. A website is "framed" if one web page appears to be a part of, or embedded in, another page. A website designer may do this 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 post content from other websites, and embed that content within their own website, such as outside mortgage calculators or multiple listing service information.



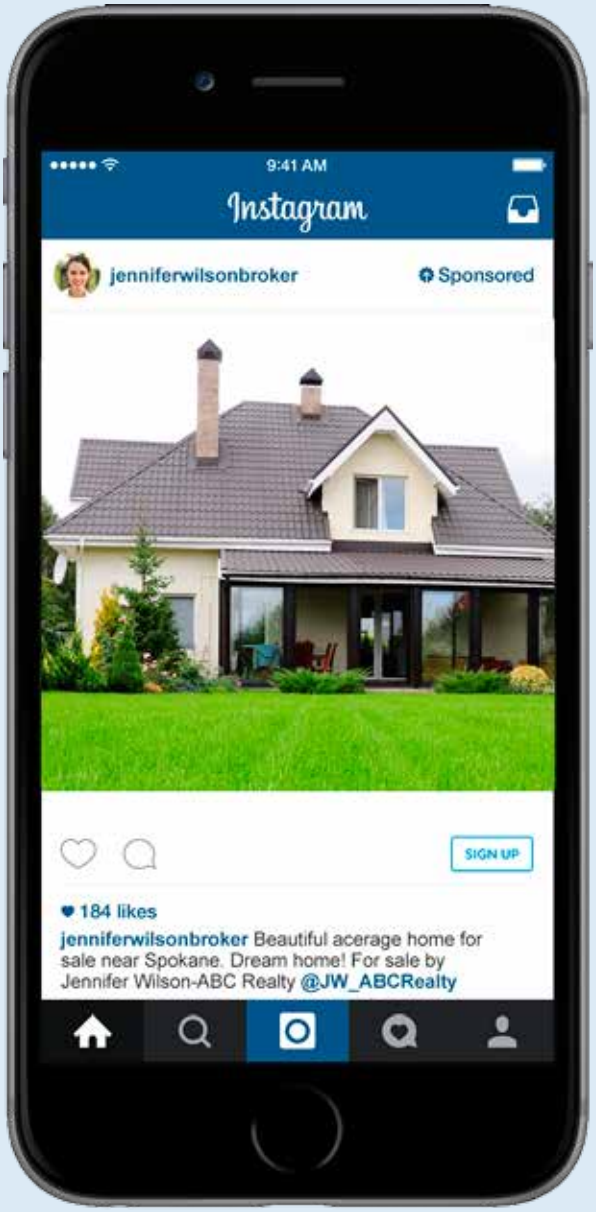
Example: Facebook
Real estate professionals are encouraged to set up a separate page for business use and not use their own personal Facebook page. Like all other advertising, the brokerage name should be obvious to the user.

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

1. Regardless of which website hosts the listings of a local multiple listing service, there are rights of compilation in those databases. Industry professionals must adhere to the guidelines established by the relevant multiple listing service for linking to that listing information.

2. Embedding content from another website within a frame of an industry professional's website can lead to copyright and/or trademark infringement. Licensee should have permission from the website owner prior to framing.

3. Industry professionals must not misrepresent the relationship between their services and the services offered by a site to which their site links. If the link creates the impression the industry professional is participating in, or endorsing the services the other side offers, the industry professional may be assuming responsibility for the performance of those services.



Example: Instagram
In this Instagram ad, the broker has the space to clearly indicate her brokerage. The character limit on Instagram posts is 2,200 characters; more than enough space to clearly indicate a brokerage name within the ad copy.

WASHINGTON STATE DEPARTMENT OF
LICENSING