

# ADVERTISING GUIDELINES

## UPDATE:

On June 1, 2006, the Ministry of Government Services amended Section 36 of Ontario Regulation 580/05 by adding the following subsection:

(4.1) Clauses (4) (a) and (b) do not apply to a registrant who advertises before January 1, 2007.

The amendment relates specifically to the terms used by a brokerage, broker of record or sole proprietor in advertising materials.

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## I. Introduction

These guidelines have been developed to assist registrants in complying with advertising requirements found in the RECO Code of Ethics: Ontario Regulation 580/05 under the *Real Estate and Business Brokers Act, 2002* (the "Act").

The types of advertising issues that are commonly reviewed in relation to the Code of Ethics are the principal topic of this guide. These guidelines will not encompass every type of promotional material being used or contemplated by registrants, however, they convey the principles that Discipline Committees use in determining whether an advertisement complies with the Code of Ethics.

These Guidelines refer to the Code of Ethics under the *Real Estate and Business Act, 2002*. Registrant conduct prior to March 31, 2006 is covered by the Code of Ethics enacted under RECO By-law No. 10. Although there are differences between the two Codes, the requirements associated with these guidelines are similar to those that apply to the Code of Ethics enacted under RECO Bylaws.

*Please note that in addition to complying with the Code of Ethics, registrant advertising must also comply with a number of other provisions in the Act and its regulations as well as other applicable federal and provincial laws related to advertising.*

## I. Application

- 1.1 These Guidelines apply to all advertising by or on behalf of all registrants. This includes all brokerages, brokers and salespersons.
- 1.2 Advertising includes any activity, public notice or representation authorized, made by or on behalf of a registrant that promotes a registrant or the business, services or real estate trades of a registrant in any medium including print, radio, television or publication on the Internet. Advertising includes all promotional events, printed material however distributed, circulars, pamphlets, bill boards, signs, business cards, letterheads, bench signs, fax cover sheets and other similar material.

## II. Registrant Identification

### a) Identification of Brokerage

- 2.1 All advertising by registrants, including brokerages, brokers and salespersons, must prominently identify the name of the relevant brokerage and provide contact information for the brokerage (CODE, Subsec. 36 (1) and (3)). It must be clear that it is the brokerage that is the party advertising.
- 2.2 Any advertising identifying salespersons and brokers must also prominently identify the brokerage that they are employed by using the brokerage's registered name and designation (CODE, Subsec. 36 (3)).
- 2.3 A salesperson or broker must not, in any advertising, identify himself or herself as being registered with a brokerage, other than the brokerage with which he or she is actually registered (CODE, Subsec. 36(3)).

### b) Use of Registered Names

- 2.4 Registrants must clearly and prominently identify themselves in all advertising and use their registered name when advertising. A registrant must not, in any advertising, identify himself, herself or itself using any name other than his, her or its name, as applicable (CODE, Subsec. 36(1)).
- 2.5 Any advertising by a brokerage that identifies salespersons or brokers it employs must use the registered names of those salespersons or brokers. Brokerages may refer to the registrant certificates or consult the RECO website to verify this information (CODE, Subsec. 36(2)).
- 2.6 Any advertising by brokers or salespersons must refer to the employer brokerage by using the brokerage's registered name. Registrants may refer to the wall certificate posted in the brokerage office or consult the RECO website to verify this information (CODE, Subsec. 36(3)).

2.7 A registrant must not, in any advertising, use another registrant's name in any way that might reasonably cause confusion about who caused the advertisement to be made. A registrant must not, in any advertising, use another registrant's name in any way that might cause persons seeking to contact that other registrant to instead contact the registrant who made or on whose behalf the advertisement was made. For example, a registrant must not register domain names on the Internet that are identical or very similar to the unique name of another registrant, so that persons seeking to contact that other registrant contact the registrant that registered the "similar" domain name (CODE, Subsec. 36(1)).

### c) Franchises

2.8 All advertising by or on behalf of a brokerage that is a franchise must disclose the name of that brokerage, exactly as registered. To clarify, a franchise name is not the name, as registered, of a brokerage. In these situations the franchise name would precede the registered name of the brokerage (example: Franchise Name ABC Realty Inc. Brokerage). There must not be any doubt in a consumer's mind as to who is advertising.

2.9 All advertising by or behalf of a brokerage that includes the name and/or marks of another entity in addition to the registered name of the brokerage, including for example the name and/or marks of a franchisor or licensor, must clearly disclose that the brokerage is a separate entity, independently owned and operated. For example:

Franchise Name ABC Realty Inc. Brokerage\*

\* Independently owned and operated

### d) Contact Information

2.10 All advertising must disclose a means by which the brokerage can be contacted. This may be a phone number, mailing address or e-mail address that has been provided to the Registrar. In the case of advertising by brokers and salespersons, brokerage contact information must directly connect to a person other than the individual salesperson or broker on

whose behalf an advertisement was made (CODE, Subsec. 36(3)).

2.11 Advertising by or on behalf of individual salespersons and brokers may also include the means by which the individual salesperson or broker may be contacted, but such information must be accompanied by disclosure that this contact information is that of the individual salesperson or broker and not that of the relevant brokerage, e.g. "direct", "residence" or some other similar description.

*NOTE: Advertisements that come into question under this Guideline are sometimes tested on this point by removing the salesperson's name and contact information and the question is posed: "Is the brokerage and its contact information obvious so a person can contact the brokerage directly."*

### e) Registration Status

#### i) Salesperson

2.12 All advertising must use the terms "salesperson", "real estate salesperson", "sales representative" or "real estate sales representative" to describe any salesperson referred to the advertisement (CODE, Subsec. 36(4)(d)). Examples include:

Mary Smith, Salesperson

Mary Smith, Real Estate Salesperson

Mary Smith, Sales Representative

Mary Smith, Real Estate Sales Representative

#### ii) Broker

2.13 After April 1, 2008, all advertising must use the terms "broker" or "real estate broker" to describe any broker referred to in the advertisement. Up until April 1, 2008 the terms "associate broker" and "associate real estate broker" may also be used to describe any broker referred to in the advertisements.

Examples include:

Mary Smith, Broker

Mary Smith, Real Estate Broker

Mary Smith, Associate Broker (until April 1, 2008)

Mary Smith, Associate Real Estate Broker (until April 1, 2008)

iii) *Broker of Record*

- 2.14 All advertising must use the terms “broker of record” or “real estate broker of record” to describe any broker of record referred to in the advertisement (CODE, Subsec. 36(4)(b)). Examples include:
- Mary Smith, Broker of Record
  - Mary Smith, Real Estate Broker of Record

iv) *Brokerage*

- 2.15 All advertising referring to brokerages must use the term “brokerage” or “real estate brokerage” to describe any brokerage referred to in the advertisement (CODE, Subsec. 36(4)(a)). Examples include:

*Corporation:*

Smith Professionals Ltd., Brokerage  
Smith Professionals Ltd., Real Estate  
Brokerage

*Partnership:*

Smith and Jones, Brokerage  
Smith and Jones, Real Estate Brokerage

*Sole Proprietor:*

Brenda Smith, Brokerage, Broker of Record  
Brenda Smith, Real Estate Brokerage,  
Broker of Record  
Brenda Smith, Brokerage, Real Estate  
Broker of Record  
Brenda Smith, Real Estate Brokerage,  
Real Estate Broker of Record

*NOTE: Because a sole proprietor must be the broker of record, registrant advertising should be clear when advertising that the individual is both a registered brokerage and broker of record for the purposes of the Act.*

v) *Confusing Terms/Registration Status Unclear*

- 2.16 Registrants must not use any terms to describe registrants in advertising that could be easily confused with the designations required by this section of the guidelines. For

example, registrants are not permitted to use terms such as sales agent, sales associate, sales or real estate consultant and agent when referring to themselves in advertising (CODE, Subsec. 36(6)).

Please note that under Section 8 of REBBA 2002 registrants are prohibited from using specialist designations until such time as regulations are passed identifying areas of specialization and creating a process for the certification of specialist designations.

- 2.17 Registrants must clearly identify their registration status in all advertising. For example an advertisement that contained the following reference:
- Smith and Jones, Real Estate Brokerage
  - Mary Smith

does not comply with Code requirements because the registration status of Mary Smith is not clear in the advertisement (CODE, Subsec. 36(4)).

vi) *Multiple Registrants*

- 2.18 Full-page newspaper and tabloid pages are often inserted on behalf of a company, and there is a desire to eliminate the costs associated with repetition of such terms as “salesperson” and “broker” throughout the page. Registrants are permitted to utilize the practice of using a clear and visible asterisk (\*) to denote a status throughout the page. The asterisk and associated reference must be clearly visible and an appropriate size for the medium in question (CODE, Subsec. 36(4)). In multiple page advertisements both the asterisk and accompanying designation reference must appear on every page of the advertisement that refers to the registrant.

An example might be:

- \* Denotes Salesperson
- \*\* Denotes Broker

vii) *Other Terms*

- 2.19 Subject to other advertising guidelines and requirements, registrants are permitted to use terms denoting an affiliation with a real estate group or association, but such terms must not appear as a substitute for the registration designations required by this section (CODE, Subsec. 36(4)).

### III. Prominence Of Advertising Displays

#### a) General

- 3.1 In all advertising, registrant identification and contact information must be sufficiently clear and prominent so that it can reasonably be noticed and understood. In all advertising, all disclosures relevant to a claim, promise or statement, including all registrant and brokerage contact information, must be made in the same advertisement where the relevant claim, promise or statement is made. This is a general guideline that governs the specific Guidelines dealing with disclosures that are set out below. What is “clear and prominent” will depend on what is appropriate to the medium used.

#### b) Disclaimers

- 3.2 All written disclaimers or qualifiers must be clear and prominent and of a size that is at least as large as the minimum size of text that is used to convey promotional information in that advertisement. In determining what is “clear and prominent” Discipline Committees will consider such factors as:
- (a) size of print;
  - (b) clarity, legibility of print;
  - (c) clarity, legibility of font;
  - (d) prominence of the disclosure compared with promotional information in the advertisement.

#### c) Billboards/Signs

- 3.3 All disclosure, including salesperson, broker and brokerage names and contact information, appearing in billboards and roadway signs must be of a size and be sufficiently prominent so that it can be read by a motorist travelling at a reasonable speed on the road from which the billboard or sign can be seen, up to the speed limit for that road.

#### d) Broadcast Media

- 3.4 All disclosure appearing in broadcast and electronic advertising, whether provided orally or in writing or by any other means, must appear or be presented for a sufficient length of time in order that it can reasonably be noticed and understood.

#### e) Internet

- 3.5 In all Internet advertising, registrants must include all of the disclosures required by Section II of these guidelines, regarding registrant identification, on every screen (CODE, Subsec. 36).
- 3.6 All Internet advertising must be provided in a manner so that the person attempting to access information is not required to incur any obligation or provide confidential information in order to do so (CODE, Subsec. 37).
- 3.7 Any disclaimers appearing in Internet advertising must be provided on the same screen as the promotional information to which the disclaimer relates (Sec. 37).
- 3.8 All written disclaimers or qualifiers must be clearly linked to the relevant claim. For example, an asterisk, double asterisk, cross, etc., which appears after the statement to which the disclaimer relates, must be unique in that advertisement to that statement and the accompanying disclaimer and be the same size in relation both to the relevant statement and the accompanying disclaimer. For example:

Claim A*	Promise B <sup>+</sup>
* Disclaimer A	<sup>+</sup> Disclaimer B

## IV. Advertising Claims, Promises and Statements

### a) General

- 4.1 Registrants must not make any advertising claims, promises or statements that are ambiguous, inaccurate or incomplete. This includes any claims or statements about the services provided by, or business activities of, the registrant or claims or statements about properties or businesses related to a trade in real estate. Inaccurate representation may occur due to the registrant providing incorrect, incomplete, unclear, unqualified, unverifiable or out of date information in an advertisement. These general guidelines apply to all advertising claims and statements in addition to the specific guidelines set out below (CODE, Subsec. 37).
- 4.2 Where a registrant discovers an inaccurate representation in any advertisement on or behalf of the registrant, the registrant must correct the inaccurate representation as soon as possible.

### b) Business Trading

#### i) Comparative Claims

- 4.3 All advertising that expressly or by implication makes a comparative claim regarding a registrant's business performance, must disclose the basis of that comparison or claim including disclosure of the details of the information used to make the claim and the source of the information (CODE, Subsec. 37). For example:
- Brokerage A was the number one brokerage in Anytown two years in a row.\*\**
- \*\* Based on number of properties listed on the Anytown Real Estate Board Multiple Listing Service for [prior two years].*

#### ii) Business Volume/Trading Activity

- 4.4 All claims that include, imply, allude or refer to a volume of business or trading activity must be accompanied by disclosure of how that

claim is determined, including the relevant time period. By way of illustration, reference to terms such as "transaction" or "transaction side" or "end" or similar concepts must be accompanied by disclosure of how those terms are being used in that advertisement, including whether a transaction in which the salesperson, broker or brokerage, as applicable, represents more than one party to a particular transaction is being counted as one or two "sides", ends or transactions (CODE, Subsec. 37). For example:

*Salesperson A was involved in 100 transactions in [prior year].\**

*\* Transactions completed in [prior year].*

*Transaction can mean a purchase or sale.*

*Where both buyer and seller are represented, two transactions are counted.*

#### iii) Business Volume/Trading Activity—Registrant Identification

- 4.5 All claims that refer to volume of business or trading activity must be accompanied by disclosure of the identity of the registrant, registrants or brokerage about whom that reference is made. If the basis of the claim concerns more than one registrant, including where the information concerns the brokerage activity or other registrant(s) activities within the brokerage cooperating as a team, then the claim must clearly disclose such brokerage or team activity as applicable. When a "team" claim is used all of the registrants whom form part of that "team" must be identified (CODE, Subsec. 37).

### c) Commissions

- 4.6 Registrants must not in any advertising indicate, directly or by implication, that commission, other remuneration, or fees are fixed, set or mandated by law, by custom or practice, by RECO, by any government or public authority, by a real estate board, by a trade association or by any other person, organization or authority (CODE, Subsec. 9).

4.7 All claims that refer to commission rates must be accompanied by disclosure of any situations in which that commission rate is not in fact charged, unless the commission rate referred to is in fact charged in all transactions. This applies even when qualifying language, including for example “as low as” or similar language accompanies the claim (CODE, Subsec. 37). For example:

Commissions as low as 1%\*

\* When [advertising registrant] represents both buyer and seller. In other situations a higher rate may be negotiated.

4.8 All claims of savings or comparisons regarding commission or other remuneration must be accompanied by sufficient information to enable an informed comparison to be made. Comparative claims between an advertised and hypothetical commission rate must be accompanied by information that clearly indicates the hypothetical rate as such and discloses that the hypothetical rate is not a fixed rate that is charged by all real estate brokerages (CODE, Subsec. 37). For example:

Save up to \$2000 in commission with Brokerage A.\*

\* Based on the difference between a 2% commission rate when Brokerage A represents both buyer and seller versus a hypothetical 5% commission rate. If the selling brokerage is another firm, including Brokerage A, a higher commission rate than 2% may apply. Commission rates may vary from brokerage to brokerage.

#### **d) Honours/Awards**

4.9 Registrants must not in any advertising refer to an award or honour unless the source and date of that award or honour is provided (CODE, Subsec. 37).

4.10 Registrants must not in any advertising refer to an award or honour shared with other registrants without first obtaining the consent of those other registrants (CODE, Subsec. 37).

4.11 Registrants must not in any advertising call anything an award or honour or refer to anything called an award or honour that was purchased by or on behalf the registrant or the brokerage with which that registrant is associated or by anyone else, as applicable (CODE, Subsec. 37).

## **V. Information About Parties, Properties And Transactions: Required Written Consents**

### **a) Real Estate:**

5.1 A registrant must not identify any real estate in any advertising without the informed written consent of the owner of that real estate. The provisions of a listing agreement signed by the seller are typically drafted to give authority to the listing registrant to advertise the property and may include permission for that property to be advertised on a real estate board Multiple Listing Service system and/or other media (CODE, Subsec. 36(8)).

### **b) Parties to Transactions:**

5.2 A registrant shall not include anything in an advertisement that could reasonably be used to identify a party to a real estate transaction without the written consent of the party (CODE, Subsec. 36 (7)).

### **c) Completed Transactions/Sold Properties:**

5.3 A registrant, with the seller’s written consent, may advertise that a property has sold, for example with a sold sign or distribution of sold cards, once a transaction has been entered into provided that no information related to terms of the agreement are included in the advertisement and provided that the seller is the owner of the property at the time of the advertisement (see 5.4 below). Once title to the property has transferred to the buyer (i.e. once the

transaction has closed), a registrant would need the buyer's written consent to make any reference to the property in sold cards or other advertisements (CODE, Sec. 36 (8)).

- 5.4 A registrant must not include any information in any advertisement that could be used to identify anything in relation to the terms of a real estate transaction without the written consent of both parties to the trade. For example, a registrant wishing to distribute sold cards that indicate a property sold for 95 % of asking price, would need the written consent of both the buyer and seller, regardless of who was the owner of the property at the time of the advertisement (CODE, Sec. 36 (9)).
- 5.5 In situations where a registrant requires the written consent of a party to a transaction to advertise and that party was not represented by the registrant, the registrant wishing to obtain written consent of the party must communicate through the other party's brokerage to seek that written consent (CODE, Sec. 7).

## Definitions

These definitions are provided for the purpose of interpreting the Advertising Guidelines only.

### **Advertising/Advertisement**

Advertising includes any activity, public notice or representation authorized, made by or on behalf of a registrant that promotes a registrant or the business, services or real estate trades of a registrant in any medium including print, radio, television or

publication on the Internet. This includes all advertising, promotional events, printed material however distributed, circulars, pamphlets, billboards, signs, business cards, letterheads, and other material.

### **Broadcast and Electronic**

Broadcast and electronic when used to describe advertising or an advertisement means any advertisement in any electronic medium, including the Internet, radio and television.

### **Disclaimer**

A disclosure (see definition of disclosure below) that must be included in an advertisement to explain, modify or qualify a claim or promise made in that advertisement to provide accurate and complete information and avoid ambiguity, confusion, deception or misrepresentation that might be caused by the omission of the disclaimer.

### **Disclosure**

Any and all information, including disclaimers (see definition above) that must be included in an advertisement in order to provide accurate and complete information and to avoid ambiguity, confusion, deception or misrepresentation that might otherwise be caused by the omission of information or by information that, without the disclosure, is inaccurate, incomplete, unclear or unverifiable.

In many advertisements, it is necessary to provide disclosure with respect to a number of statements that appear in the advertisement and in those cases "disclosure" is used to refer to all the information that is required to be disclosed in that advertisement.



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