

For the RECOrd



NOVEMBER 2006

Avoiding Common Advertising Mistakes

From the volume of advertising-related questions RECO receives, it appears that a number of registrants are still uncertain about advertising requirements.

The following tips are based on registrants' most frequently asked questions.

- In all advertising, it must be evident that it is the brokerage that is the party advertising; therefore, the name of your brokerage, as registered, must clearly appear. For websites, brokerage identification must appear on every page of the website.
- If the brokerage advertising is a franchise organization or licensee, the words "independently owned and operated" must clearly appear after the name of the brokerage.
- Individual registrants must ensure that their name (as registered) and registration status (broker of record, broker or salesperson) clearly appears.
- An appropriate method to contact the brokerage must clearly appear. Any secondary telephone numbers/method of contact must be appropriately identified as "direct," "residence," "cell" etc. If you wish to use a secondary contact, it should be the same form as the brokerage contact. For example, if you display the brokerage phone number and wish to include a secondary contact, it should also be a phone number.
- When advertising relates to a team, all members of the team must be identified including registration status if applicable.
- Disclaimers or qualifiers must be clearly shown. As a guide only, RECO suggests that they be at least the same size font as the smallest words in the promotional advertisement. This is to ensure that the concept of clear disclosure is met.
- Ensure that all claims made in your advertisement are accurate and can be verified. For example, the source, date and basis of any award must be clearly displayed.
- When advertising sold properties, ensure that you obtain applicable permissions for the picture and/or transaction details of the properties being advertised.

- Registrants are prohibited from holding themselves out as a specialist in any type of real estate as there are currently no regulations designating areas of specialization or a prescribed process for specialist certification.

It is important to keep in mind that advertising includes any activity, public notice or representation authorized, made by or on behalf of a registrant that promotes a registrant or business, service 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.

For more information about advertising requirements, please refer to the Advertising Guidelines in the Guide to REBBA 2002 or visit the REBBA 2002 section of RECO's website at www.reco.on.ca.

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Focus on Customer Service

Amid an increasing number of calls and inquiries to RECO about customer relationship issues, the number one category of complaint emerging relates to service.

The complaint most often sounds something like this: “I signed a buyer agency agreement (or listing agreement) and I never heard back from the real estate representative; so, I am no longer interested in working with this person. Can RECO get me out of the agreement?”

Setting aside the issue of releasing a consumer from an agreement, what has happened to the relationship between the consumer and the registrant they chose to work with?

Complaints concerning service or poor “people skills” are a reminder that registrants are first and foremost service providers. One of the consumer’s most lasting impressions of the real estate experience will be the interaction they have with the registrant they chose to work with.

Consumers have varying expectations, and those expectations need to be considered. You can avoid being the subject of this type of complaint if you keep these “best practices” in mind:

- Consumers expect to be kept informed. How often may vary, but if they have not heard from you in what they feel is a reasonable time, they may think you are not actively working for them.
- Make sure you have clearly explained the services that will be provided. Consumers may assume that certain

services are “standard” – leading to dissatisfaction when they find that’s not the case.

- Provide as much feedback and interaction with the consumer as is reasonably possible.
- Document your services.
- Document how and when you will keep the seller or buyer fully informed about the progress of your activities on their behalf.
- Take the time to explain real estate documents and procedures and remind them to ask questions if they don’t fully understand something.

Real estate is still primarily a business of relationships. A strong customer service focus is one sure way to achieve success.

Remember that relatively minor customer service issues can eventually turn into more serious matters if they are not addressed.

The Code of Ethics contained in the Real Estate and Business Brokers Act, 2002 touches on some of these service related requirements. For example, registrants are expected to comply with Section 10 of the Code of Ethics. Section 10 deals with “Information Before Agreements,” and generally requires that registrants must provide the seller or buyer with various information



regarding service alternatives, types of services offered and multiple representation scenarios.

While similar in some ways to the requirements under the old Code, this section requires more detailed information than was previously provided. The brokerage is also required to use its best efforts to seek a written acknowledgment that the information was provided to the buyer or seller before they entered into an agreement.

In addition to requirements mentioned under Information Before Agreement (Code, Sec. 10), there are several other sections of the Code that can potentially come into play in the case of a more serious service-related complaint. These include Buyer Representation Agreement (Code, Subsec. 1(1) and Sec. 14), Seller Representation Agreement (Code, Subsec. 1(1) and Sec. 13), Multiple Representation (Code, Subsec. 10(3) and 16 and GEN, Sec. 22), Nature of Relationship (Code, Sec. 17) and Steps Taken By Registrant (Code O. Reg s80/05, s. 23).

Reviewing the obligations set out in the Code of Ethics will help you determine how the requirements apply when representing a client or providing service to a customer.

REBBA²⁰⁰² Compliance Matters

Under REBBA 2002, there are numerous disclosure requirements relating to employees and brokerages. In this edition we highlight disclosure to employing brokerages.



Refer to Section 32 of the General Regulation (page 232 of the Guide to REBBA 2002)

DISCLOSURE TO BROKERAGES

As a registered employee, you must disclose the following to your employing brokerage at the earliest opportunity:

- Any ownership interest that you have in another brokerage.
- Any conviction, absolute discharge or conditional discharge received by you for an offence under any Act.
- Any professional discipline proceeding under any Act that resulted in an order against you.

- Whether or not you are insured as required under REBBA 2002. You must also disclose this information whenever you are required to renew your insurance.

If you are seeking employment with a new brokerage the same disclosure requirements apply. In addition, you are required to provide proof of insurance coverage. The brokerage may verify your status quickly by using the Registrant Search feature on RECO's website. The paid or unpaid status of every registrant is available online and is considered to be "proof" of insurance coverage for this purpose.

DID YOU KNOW?

DID YOU KNOW THAT YOU ARE REQUIRED TO NOTIFY THE REGISTRAR OF ANY CHANGE TO THE INFORMATION YOU PROVIDED IN YOUR APPLICATION FOR REGISTRATION, RENEWAL OF REGISTRATION OR REINSTATEMENT OF REGISTRATION WITHIN 5 DAYS?

Notice to the Registrar must be in writing and must include details regarding the nature of the change. Examples of changes include:

- Address or name change

- Employment other than as a real estate broker or salesperson
- Unpaid judgments
- Involvement in a personal bankruptcy or the bankruptcy of a corporation for which you are an officer, director or majority shareholder
- Charges pending, a conviction or finding of guilt of an offence under any law
- Disciplinary actions related to your registration, licence or professional status with another regulatory body or professional organization

Compliance Matters will be a regular feature in For the RECOrd. To assist registrants with compliance, highlighted topics in each issue will be chosen based on registrants' most common REBBA 2002 oversights.

Regulatory Activity

April 2006 to September 2006

Under the Real Estate and Business Brokers Act, 2002, the Registrar is required to make certain information available to the public. The information required to be made publicly available includes proposals, convictions, charges, and discipline decisions. For detailed information about these and other matters, or to view RECO's Public Notice Policy, please visit the "Regulatory Activity" section of the RECO website.

REGISTRAR'S PROPOSALS

The Registrar has the authority to refuse, refuse to renew, revoke, suspend or apply terms and conditions to an application/registration. In such situations, the Registrar prepares a Proposal and notifies the applicant/registrant of that proposal together with reasons for the Registrar taking such action. A registrant who has received a Proposal has 15 days, from the date the Proposal is served, to file a notice of appeal to the Licence Appeal Tribunal (LAT). If no appeal is received by LAT the Registrar may carry out the Proposal.

Paul Lonergan (*Toronto, Ontario*)

The Registrar issued a Proposal to revoke registration on July 4, 2005. The Proposal was appealed to the Licence Appeal Tribunal. By Order released on June 26, 2006, the Licence Appeal Tribunal directed the Registrar to carry out his Proposal. The registration of Paul Lonergan was revoked on June 27, 2006. Paul Lonergan is seeking a stay of LAT's decision in the Divisional Court.

Courtney Wallis Simpson (*Markham, Ontario*) The Registrar issued a Proposal to revoke registration on November 11, 2005. Two supplementary Proposals to revoke registration were issued on January 23, 2006 and May 1, 2006. The Proposals were appealed to the Licence Appeal Tribunal. By Order released on June 16, 2006, the Licence Appeal Tribunal directed the Registrar to carry out his Proposals. The registration of Courtney Wallis Simpson was revoked on June 16, 2006.

Ottawa Carleton Realty Ltd. (*Ottawa, Ontario*) The Registrar issued a Proposal to revoke the registration of Ottawa Carleton Realty Ltd. on May 5, 2006. The Registrar's Proposal was not appealed to the Licence Appeal Tribunal and therefore, in accordance with section 14(1) of the Real Estate and Business Brokers Act, 2002, the registration of Ottawa Carleton Realty Ltd. was revoked on June 12, 2006.

Alain Parent (*Ottawa, Ontario*)

The Registrar issued a Proposal to revoke the registration of Alain Parent on May 5, 2006. The Registrar's Proposal was not appealed to the Licence Appeal Tribunal and therefore, in accordance with section 14(1) of the Real Estate and Business Brokers Act, 2002, the registration of Alain Parent was revoked on June 12, 2006.

Desmond Allen (*Caledon, Ontario*)

The Registrar issued a Proposal to revoke the registration of Desmond Allen on May 8, 2006. The Registrar's Proposal was not appealed to the Licence Appeal Tribunal and therefore,

in accordance with section 14(1) of the Real Estate and Business Brokers Act, 2002, the registration of Desmond Allen was revoked on June 5, 2006.

Kenneth Kelly (*Ancaster, Ontario*)

The Registrar issued a Proposal to revoke the registration of Kenneth Kelly on May 5, 2006. The Registrar's Proposal was not appealed to the Licence Appeal Tribunal and therefore, in accordance with section 14(1) of the Real Estate and Business Brokers Act, 2002, the registration of Kenneth Kelly was revoked on June 5, 2006.

Equifirst Realty Inc. (*Mississauga, Ontario*)

The Registrar issued a Proposal to revoke the registration of Equifirst Realty Inc. on May 5, 2006. The Registrar's Proposal was not appealed to the Licence Appeal Tribunal and therefore, in accordance with section 14(1) of the Real Estate and Business Brokers Act, 2002, the registration of Equifirst Realty Inc. was revoked on June 5, 2006.

Joseph Singh (*Mississauga, Ontario*)

The Registrar issued a Proposal to revoke registration on April 28, 2005. The Proposal was appealed to the Licence Appeal Tribunal. By Order released on June 2, 2006, the Licence Appeal Tribunal directed the Registrar to carry out his Proposal. The registration of Joseph Singh was revoked on June 2, 2006.

Simon Dahan (*Thornhill, Ontario*)

The Registrar issued a Proposal to refuse reinstatement of registration on November 30, 2005. The Proposal was appealed to the Licence Appeal

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Tribunal. By Order released on May 19, 2006, the Licence Appeal Tribunal directed the Registrar to register Simon Dahan, subject to certain terms and conditions. Simon Dahan is not currently registered under the Real Estate and Business Brokers Act, 2002.

Dwayne Greene (*Toronto, Ontario*)

The Registrar issued a Proposal to revoke registration on September 16, 2005. The Proposal was appealed to the Licence Appeal Tribunal. By Order released on May 9, 2006, the Licence Appeal Tribunal directed the Registrar to carry out his Proposal. The registration of Dwayne Greene was revoked on May 9, 2006.

CONVICTIONS

The Ontario Provincial Offences Act (POA) governs how charges are processed and prosecuted in the Ontario courts. The POA applies to all Ontario statutes and regulations, including REBBA 2002. Individuals found guilty of

offences are subject to fines up to \$50,000 and a potential prison term of two years. Corporations found guilty of offences are subject to fines up to \$250,000. Courts also have the power to order convicted persons to pay compensation and make restitution.

September 11, 2006

Courtney Wallis Simpson

Courtney Wallis Simpson pled guilty to 22 charges under the Real Estate and Business Brokers Act, Regulation 986

- 2 counts of maintaining more than one real estate trust account
- 11 counts of obstructing an investigator
- 8 counts of obstructing an inspector
- 1 count of furnishing false information in an application

Sentencing has been scheduled for March 6, 2007

September 08, 2006

Kennedy Ho

Kennedy Ho was found guilty of three counts of employing an unregistered

person and was fined \$2,500 per count for a total of \$7,500.

September 08, 2006

Sultan Realty Inc.

Sultan Realty Inc. was found guilty of three counts of paying commission to an unregistered person and was fined \$2,500 for one count and \$2,000 for two counts, for a total of \$6,500.

July 27, 2006

George Abony

George Abony was found guilty of one count of trading in real estate while unregistered. He was fined \$5,000, ordered to pay restitution of \$12,000 and placed on six months probation.

July 27, 2006

Nathan Rotstein

Nathan Rotstein was found guilty of one count of trading in real estate while unregistered. He was fined \$3,000, ordered to pay restitution of \$2,000 and placed on six months probation.

Proposed Amendments to REBBA 2002



The Ministry of Government Services Consumer Protection and Service Modernization Act, 2006, which was introduced on October 19, brings the promise of a welcome change to the administration of the Real Estate and Business Brokers Act, 2002 (REBBA 2002).

The *Consumer Protection and Service Modernization Act, 2006* contains changes to scores of statutes, including much needed proposed amendments to REBBA 2002. Changes include new provisions under REBBA 2002 to create an automatic suspension of registration on the effective date of the term of the insurance for those registrants who have failed to submit the required insurance payment amounts. The suspension would remain in effect until such time as the Registrar is satisfied that the required insurance fees have been paid. If the new provisions come into effect, the Registrar would not have to issue a Notice of Proposal to revoke registration or order an immediate suspension as is presently the case.

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“RECO is pleased to see that the Ministry has responded to RECO’s concerns related to the enforcement of insurance requirements and included the proposed amendments, which create an automatic suspension,” said Tom Wright, RECO’s President/CEO. “Consumers will be better protected and the vast majority of RECO’s registrants, who pay the required insurance fees on time, will no longer see registration fee revenues used to enforce insurance requirements through what can often be a lengthy and expensive legal process.”

The *Consumer Protection and Service Modernization Act, 2006* would amend 53 statutes, including the Land Titles Act. Amendments to the Land Titles Act would ensure that ownership of a property can’t be lost as a result of a falsified mortgage, fraudulent sale or a counterfeit power of attorney.

For more information visit:
www.mgs.gov.on.ca



RECO REMINDER

Interested In Becoming A Decision-Maker In Disciplinary Proceedings?

RECO IS SEEKING APPLICANTS INTERESTED IN SERVING AS MEMBERS OF ITS DISCIPLINE AND APPEALS COMMITTEES. THE DISCIPLINE AND APPEALS COMMITTEES ARE ESTABLISHED TO DETERMINE IF A REGISTRANT HAS FAILED TO COMPLY WITH THE CODE OF ETHICS AND TO HEAR APPEALS OF DISCIPLINE DECISIONS.

If you are a current registrant and have been registered under REBBA 2002 or its predecessor legislation for at least three of the last five years as a broker of record, broker or salesperson, consider this opportunity to play an active role in the regulatory process.

RECO is seeking applicants who have good judgment, integrity, a commitment to fairness and familiarity with RECO’s mandate and relevant legislation. Applicants should possess a strong interest in administrative law and/or a willingness to be trained for this role. Decision-making experience with another administrative body, board, council or tribunal is also an asset.

For more information about the recruitment process and application requirements, please visit the Current News & Information section on the main page of RECO’s website.

Do you have any comments or inquiries about For the RECOrd newsletter?

Please send them to: Communications Department
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