

Advertising Guidelines



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Disclaimer: Registrant names used in these guidelines are fictitious names used for demonstrative purposes only and do not reflect current or potential registrants under REBBA 2002.

Introduction

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

These guidelines cannot hope to encompass every situation and every type of advertising material being used or contemplated by registrants. It does, however, convey many of the principles that the Registrar will consider in determining whether an advertisement complies with the Act and/or the Code of Ethics. Should a complaint about advertising be referred to the Discipline Committee, a Discipline Panel might also take these principles into consideration.

These guidelines are not intended as a comprehensive description of all applicable advertising laws. Many statutes impact advertising and related conduct in the marketplace. These include federal laws such as the *Competition Act*, the *Personal Information Protection and Electronic Documents Act* (PIPEDA), and trademark and copyright statutes, provincial laws including consumer protection legislation, and municipal by-laws regarding things such as signage. The enforcement of these various statutes is outside of RECO’s jurisdiction.

APPLICATION

These guidelines apply to all advertising by or on behalf of all registrants. This includes all brokerages, brokers and salespersons.

“Advertising” means any notice, announcement or representation directed at the public that is authorized, made by or on behalf of a registrant and that is intended to promote a registrant or the business, services or real estate trades of a registrant in any medium including, but not limited to, print, radio, television, electronic media or publication on the internet (including websites and social media sites). Business cards, letterhead or fax cover sheets that contain promotional statements may be considered as “advertising”.

MINIMUM REQUIREMENTS FOR ADVERTISEMENTS

Section 36 of the Code of Ethics sets out four minimum requirements that must appear in all advertising. Those requirements are as follows:

a) Identification of registrant

All advertising by a registrant, including a brokerage, a broker or a salesperson, must clearly and prominently include the name of the registrant that is placing the advertisement. The name used in the advertisement must be the name (legal name or trade name) in which the registrant is registered with RECO. Registrants with a common last name and designation may be identified jointly (e.g., Tom & Rita McIntyre, Sales Representatives).

There are no formal criteria for what constitutes “clearly and prominently”. Registrant identification information must be sufficiently sized and placed within the advertisement so that it can reasonably be noticed and understood by the intended audience. For the purpose of determining if an advertisement appears to be in violation of the Code of Ethics. The Registrar will consider, among other things, the following characteristics of the advertisement:

- 1) For visually-based advertising, the size and legibility of the printed name, and the location of the name relative to the other elements of the advertisement;
- 2) For aurally-based advertising (i.e., radio), the frequency with which the name is used, the point in the advertisement when the name is used, and the speed with which the name is mentioned.

Incorrect



Correct



2 Brothers
Franchise Professionals Inc.,
Brokerage
Independently Owned & Operated

**Call Keiko & Jordan
for a home evaluation**

**Keiko & Jordan Smith
Brokers**

Office: 000-123-0000 Cell: 000-123-0000 www.2broswebsite.com

b) Identification of individuals

If an individual broker or salesperson is identified by name, the name used must be the name in which the broker or salesperson is registered with RECO. Registrants with a common last name and designation may be identified jointly (e.g., Keiko & Jordan Smith, Brokers).

c) Identification of brokerage

Every advertisement by a broker or a salesperson must clearly and prominently identify the brokerage that employs the broker or salesperson. The brokerage name used in the advertisement must be the name in which the brokerage is registered with RECO.

As noted in "Identification of registrant" on page 4, "clearly and prominently" will be assessed by the Registrar (or the Discipline Committee if an advertising complaint is referred to them) based on various characteristics of the advertisement.

A sole proprietorship brokerage must take special care to ensure that it is clear that the individual is both a registered brokerage and the broker of record.

Correct





d) Description of registrant

Where an advertisement identifies a registrant, the specific description of the registrant must be noted. Specifically:

i. Salesperson

The terms “salesperson”, “real estate salesperson”, “sales representative” or “real estate sales representative”, or the French language equivalents “agent immobilier”, “représentant commercial” or “représentant immobilier”, must be used to describe any salesperson who is referred to in the advertisement;

ii. Broker

The terms “broker” or “real estate broker”, or the French language equivalents “courtier” or “courtier immobilier”, must be used to describe any broker who is referred to in the advertisement;

iii. Broker of record

The terms “broker of record” or “real estate broker of record”, or the French language equivalents “courtier responsable” or “courtier immobilier responsable”, must be used to describe any broker of record who is referred to in the advertisement; and

iv. Brokerage

The terms “brokerage” or “real estate brokerage”, or the French language equivalents “maison de courtage” or “maison de courtage immobilier”, must be used to describe any brokerage that is referred to in the advertisement.

v. Other issues

In larger advertisements where multiple registrants are identified, there may be a desire to eliminate the costs or visual clutter associated with repetition of terms such as “salesperson” and “broker” throughout the advertisement. Registrants are permitted to use a clear and visible symbol (such as an asterisk) to denote a description throughout the page. The symbol and associated reference must be clearly visible in the medium in question. In multiple page advertisements, or on multi-page websites, both the symbol and accompanying designation reference must appear on every page that refers to registrants.

If a registrant placing an advertisement is uncertain about the registered name or designation of a salesperson, broker or brokerage that is to be identified or described in the advertisement, they may confirm the information on MyWeb or through RECO’s website at www.reco.on.ca.

PROHIBITIONS

Section 36 and 37 of the Code of Ethics and other sections of REBBA 2002 contain specific prohibitions related to advertising (i.e., things that are not allowed in advertising, or are only allowed in specific circumstances). Those prohibitions are as follows:

a) Confusing terms

Registrants must not use any terms to describe a registrant in an advertisement if the term could reasonably be confused with registration status terms described in Section II(d) of these guidelines. Without limiting the generality of this prohibition, terms such as “sales agent”, “sales associate” or “sales consultant” are not permitted. 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 description of registrant noted on page 7.

b) Identification of a party without consent

Registrants must not include anything in an advertisement (such as an image or text) that could reasonably be used to identify any party to a real estate transaction, unless the registrant has the written consent of that party to do so.

A registrant may, within the terms of a representation agreement or a customer service agreement, include wording that provides consent to allow advertising which includes the type of information noted above. Alternatively, separate written consent can be obtained. In a situation where a consent is required from a party to the transaction that was not represented by the registrant, communication must go through that party's brokerage to seek written consent.

c) Identification of a property without consent

Registrants must not include anything in an advertisement (such as an image or text) that could reasonably be used to identify a specific property, unless the brokerage has the written consent of the owner of the property to do so. The provisions of a listing agreement signed by the seller are typically drafted to give authority to the listing brokerage to advertise the property and may include permission

for that property to be advertised on a real estate board Multiple Listing Service (MLS®) system and/or other media. Registrants should be familiar with the terms of their standard listing agreements in this regard.

A registrant, with the seller's written consent, may advertise that a property has sold, for example using 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 item (d) below). Once title to the property has transferred to the buyer (i.e. once the transaction has completed), a registrant would need the buyer's written consent to make any reference to the property in sold cards or other advertisements.

As noted in (b), consent can be obtained through specific wording in a representation or service agreement, and a registrant must communicate through the appropriate brokerage to seek consent.

d) Identification of agreement details without consent

Registrants must not include anything in an advertisement (such as an image or text) that could reasonably be used to determine any of the contents of an agreement (such as price) regarding a real estate transaction, unless the registrant has the written consent of all the parties to the agreement to do so. 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.

As noted in (b), consent can be obtained through specific wording in a representation or service agreement, and a registrant must communicate through the appropriate brokerage to seek consent.



e) False, misleading or deceptive statements, and inaccurate representations

Consistent with RECO's principal objective of fostering public confidence and upholding integrity in real estate transactions, Section 37 of REBBA 2002 contains a general prohibition against false, misleading or deceptive statements in advertising by registrants. Section 37 of the Code of Ethics further prohibits a registrant from knowingly making an inaccurate representation in respect of the services provided by the registrant and in respect of a trade in real estate. This would include inaccurate representations made in an advertisement.

The issues giving rise to these prohibitions generally relate to claims, promises and statements made in advertising, such as comparative rankings (e.g., "#1 brokerage in town"), claims about business volume or trading activity (e.g., "Over 100 transactions last year"), promises of savings or rebates ("\$1,000 cash back"), and honours or awards received by the registrant.

False statements are those that can be shown to be factually incorrect. Generally, there is little room for interpretation in these situations. The assessment of statements that may be misleading, deceptive or inaccurate, however, is more subjective in nature.

A misleading statement is one that causes someone to have a wrong idea or impression. It does not require that all readers of the statement be misled in order for the statement or claim to be considered misleading.

Similarly, a deceptive statement is one that causes something to be easily mistaken for something else, or causes the reader

to believe something that is not true. It is a statement that is purposefully misleading.

An inaccurate representation is one that is imprecise. It would be inaccurate to make a statement that is true, but to make it in a vague or incomplete manner in circumstances where specificity is required to understand its truth. An inaccurate statement may or may not be misleading and/or deceptive.

It is not possible for these guidelines to address all the types of potentially false, misleading, deceptive or inaccurate statements that may appear in real estate advertising. RECO cannot provide a prescriptive set of rules that, if followed, will ensure that an advertisement will not breach REBBA 2002 or the Code of Ethics.

In general, registrants should assume that all statements in an advertisement will be taken at face value and interpreted based on their plain meaning (consistent with the "reasonable bystander" test used in legal cases). If the registrant's intent is to imply something else, or is aware that the statement could be interpreted in different ways, it would be better to spell out the intended meaning in plain language, or to provide some form of disclaimer within the advertisement. Failure to do so could result in the statement being deemed misleading, deceptive or inaccurate.

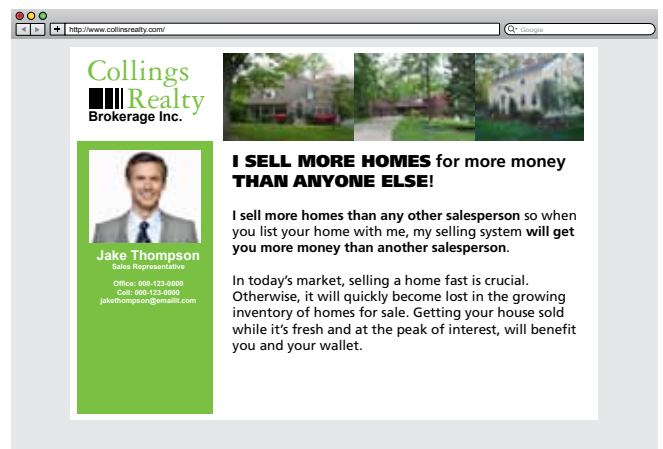
In assessing whether a statement might represent a breach of REBBA 2002 or the Code, the Registrar will apply a form of the "reasonable bystander" test noted above.

By way of guidance, however, there are a number of good practices which, if followed, should minimize the risk that a registrant's advertising will face scrutiny regarding these concerns. **These practices are as follows:**

i. Comparative claims

An advertisement that expressly, or by implication, makes a comparative claim regarding a registrant's business performance, should 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.

Potentially misleading



Collings Realty Brokerage Inc.

Jake Thompson
Sales Representative

Office: 800-123-0000
Cell: 800-123-0000
jake.thompson@collings.com

I SELL MORE HOMES for more money THAN ANYONE ELSE!

I sell more homes than any other salesperson so when you list your home with me, my selling system will get you more money than another salesperson.

In today's market, selling a home fast is crucial. Otherwise, it will quickly become lost in the growing inventory of homes for sale. Getting your house sold while it's fresh and at the peak of interest, will benefit you and your wallet.

Acceptable alternative



Collings Realty Brokerage Inc.

Jake Thompson
Sales Representative

Office: 800-123-0000
Cell: 800-123-0000
jake.thompson@collings.com

No other sales representative in Town sells as many homes and as close to the asking price as I do.

According to 2011 MLS® statistics for Town Real Estate Board no other salesperson is the representative for as many sold homes as I am. In 2011 I was the salesperson for 85 properties whereas the next closest salesperson was 78 **.

Further my list to sales price ratio is 89% whereas the average for each other salesperson in Town Real Estate Board is 80% or less.

By listing with Collings Realty and me as your sales representative it is clear from these statistics and my many satisfied sellers that I can net you more money than another salesperson.

Call me today!

** Sold home statistics refers to properties listed with Collings Realty with Jake Thompson as the seller's sales representative. Sales to buyers and non BRCA® sales are not included.

**ii. Statements re:
business volume / trading activity**

An advertisement that includes statements or claims that state, imply, allude or refer to a volume of business or trading activity should be accompanied by disclosure of how that claim has been determined, including the relevant time period. By way of illustration, reference to terms such as “transaction” or “transaction side” or “end” or similar concepts should 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. Further, claims that refer to volume of business or trading activity should disclose 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 should clearly disclose such brokerage or team activity as applicable.

When a “team” claim is used, the size of the team should be noted or the identities of the members of the team should be provided.

Potentially misleading



Acceptable alternative



Acceptable examples



iii. Promises and statements re: commission or savings

All claims within advertisements that refer to commission rates should be accompanied by disclosure of any conditions or circumstances in which that commission rate would not in fact be 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. All claims of savings or comparisons regarding commission or other remuneration should be accompanied by sufficient information to enable an informed comparison to be made. Comparative claims between an advertised and hypothetical commission rate should 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. Advertisements must not indicate or suggest, directly or indirectly, that commissions or other fees are fixed or approved by RECO or any other government authority, real estate board or real estate association.

Potentially misleading



CR
Correct Realty Inc.

Brokerage
Jake Thompson
Sales Representative

CHAIRMAN CLUB WINNER

Office: 000-123-0000 Cell: 000-123-0000
jakethompson@emailit.com

Acceptable alternative



CR
Correct Realty Inc.

Brokerage
Jake Thompson
Sales Representative

 **Chairman's Club 2000***

Office: 000-123-0000 Cell: 000-123-0000
jakethompson@emailit.com

*Award given for earnings in excess of \$50,000 in year shown



iv. Statements or indications of honours and awards

If an advertisement refers to an award or honour, then the source and date of that award or honour should be indicated. Registrant advertising should not refer to an award or honour that was shared amongst other registrants without clearly indicating that fact. Registrant advertising should not, directly or by inference, refer to anything as an award or honour if that thing was in any way purchased or paid for by, or on behalf of, the registrant.

CONSEQUENCES OF NON-COMPLIANT ADVERTISING

It is RECO's objective and responsibility to ensure all registrant advertising is compliant with the requirements and prohibitions found in REBBA 2002 and the Code of Ethics. When an instance of non-compliant advertising is first discovered, the Registrar will contact the registrant in writing to identify the non-compliance and request prompt action to bring the advertisement into compliance.

Failure to respond to this request may result in more formal action being taken by the Registrar, pursuant to various provisions of REBBA 2002. The outcomes may include sanctions by the Discipline Committee, a formal compliance order issued by the Superior Court of Justice, or prosecution in Provincial Offences Court.

In addition, registrants may be subject to civil litigation by those affected by statements in advertisements that are deemed false, misleading or deceptive.



Disclaimer: Registrant names used in these guidelines are fictitious names used for demonstrative purposes only and do not reflect current or potential registrants under REBBA 2002.

APPENDIX – EXTRACTS FROM REBBA 2002 AND O.REG. 580/05 (CODE OF ETHICS)

REBBA 2002

37. No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in real estate.

ONTARIO REGULATION 580/05 - CODE OF ETHICS

Advertising

36. (1) A registrant shall clearly and prominently disclose the name in which the registrant is registered in all the registrant's advertisements.

(2) A brokerage that identifies a broker or salesperson by name in an advertisement shall use the name in which the broker or salesperson is registered.

(3) A broker or salesperson shall not advertise in any manner unless the advertisement clearly and prominently identifies the brokerage that employs the broker or salesperson, using the name in which the brokerage is registered.

(4) A registrant who advertises shall,

- (a) use the term "brokerage", "real estate brokerage", "maison de courtage" or "maison de courtage immobilier" to describe any brokerage that is referred to in the advertisement;
- (b) use the term "broker of record", "real estate broker of record", "courtier responsable" or "courtier immobilier responsable" to describe any broker of record who is referred to in the advertisement;
- (c) use the term "broker", "real estate broker", "courtier" or "courtier immobilier" to describe any broker who is referred to in the advertisement; and
- (d) use the term "salesperson", "real estate salesperson", "sales representative", "real estate sales representative", "agent immobilier", "représentant commercial" or "représentant immobilier" to describe any salesperson who is referred to in the advertisement.

(4.1) REVOKED:

(5) Despite clause (4) (c), a registrant who advertises may, before April 1, 2008, use the term "associate broker", "associate real estate broker", "courtier associé" or "courtier immobilier associé" to describe any broker who is referred to in the advertisement.

(6) A registrant who advertises shall not use a term to describe any registrant that is referred to in the advertisement if the term could reasonably be confused with a term that is required or authorized by subsection (4) or (5).

(7) A registrant shall not include anything in an advertisement that could reasonably be used to identify a party to the acquisition or disposition of an interest in real estate unless the party has consented in writing.

(8) A registrant shall not include anything in an advertisement that could reasonably be used to identify specific real estate unless the owner of the real estate has consented in writing.

(9) A registrant shall not include anything in an advertisement that could reasonably be used to determine any of the contents of an agreement that deals with the conveyance of an interest in real estate, including any provision of the agreement relating to the price, unless the parties to the agreement have consented in writing.

Inaccurate representations

37. (1) A registrant shall not knowingly make an inaccurate representation in respect of a trade in real estate.

(2) A registrant shall not knowingly make an inaccurate representation about services provided by the registrant.

Error, misrepresentation, fraud, etc.

38. A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in real estate.



Real Estate Council of Ontario

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MyWeb: <https://myweb.reco.on.ca>

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