

nature of the violation, formal discipline may take the form of a public reproof, license suspension, restricted license or an outright license revocation. In addition to these administrative consequences, other local, state, or federal laws may apply and violators may also find themselves subject to criminal or civil charges. (CCR 2725)

## Advertising

### What is Advertising?

**A**dvertising is a form of communication that uses signs, symbols, or actions to create or raise awareness of a business or products, promote a brand, or bring in customers.



Advertising for real estate attracts sellers, buyers, investors, renters, or other persons interested in the services or products offered. Some of the forms of advertising may include any one or a combination of the following:

- Social media ads;
- Printed material (flyers, handouts, newspapers, magazines, brochures, business cards);
- Electronic media (internet, websites, text messages, telephone calls, emails, television, radio, cinema, streaming video and audio);
- Promotional events, including open houses;
- Billboards;

- Signs.

### Basic Requirements

#### License Required to Advertise

With few exceptions, only real estate licensees may offer their services and solicit clients. If a person is a principal and acting on that person's own behalf, a real estate license is not required. However, if a person represents another party (i.e., act for or on behalf of another person in an agency capacity), expect or receive compensation, and perform any of the following regulated activities, then a real estate license is required:

- Solicit prospective sellers or purchasers of real estate or a business opportunity;
- Lease or rent, offer to lease, or rent, or place for rent, or solicit listings of places for rent, or solicit for prospective tenants, or negotiate the sale, purchase or negotiate the sale, purchase or exchanges of leases on real property, or collect rents from real property, or improvements thereon, or from business opportunities;
- Assist or offer to assist in filing an application for the purchase or lease of, or in locating or entering, upon lands owned by the state or federal government;
- Solicit borrowers or lenders, offer to negotiate loans, collect payments, or perform services for borrowers or lenders or note owners in connection with loans secured by liens or real property or on a business opportunity;
- Sell or offer to sell, buy or offer to buy, exchange or offer to exchange a real property secured by a lien on real property or on a business opportunity and perform services for the holders.

Before engaging in the business of or advertising as a real estate broker or real estate salesperson, one must first be licensed in this state as a real estate broker or salesperson. Failing to obtain a license *before* conducting licensed real estate activities (the activities identified above) is unlawful and may

result in administrative, civil, and criminal sanctions. If in doubt, check with the Department before opening a business, starting activities, or advertising services. (Bus. & Prof. Code sections 10130 and 10131; CCR 2770.1, 2773, 2847.3, and 2848)

## False, Deceptive, or Misleading Advertisements

Real estate licensees may not publish, advertise, distribute, or circulate any material or information that is false, deceptive, or misleading. While deliberate efforts to mislead or deceive are clear violations of the law, making false or misleading statements that one should have known are untrue may also lead to disciplinary action. Claiming ignorance when one should have known the truth is not a defense, nor is carelessness or negligence.

Putting advertising together that is false, misleading, or deceptive may subject a licensee to disciplinary action. Licensees have a clear responsibility for ensuring their advertising is not misleading or deceptive.

When advertising, a licensee should be able to substantiate any of the information in the advertisement on request.

## Avoid Bait and Switch

On occasion, licensees may offer in their advertisements and solicitation materials incentives and/or terms that are at first glance more favorable than those offered by other licensees in the same marketplace. This could take the form of lower interest rates, lower fees, merchandise, or other goods.

For example, a prospective customer may be baited to call a licensee by a “too good to be true” teaser price in an advertisement, only to be told the advertised price is no longer available. The advertiser then tries to sell to the consumer the more expensive product. Is there an issue here? Maybe.

In some instances, there may be exclusionary or limiting terms, such as making the offer good for a

limited number of transactions or only good for a limited period of time. Use of the terms “terms and conditions apply”, however, should not materially change or reduce the offer. If the terms and conditions materially alter the program from the description in the headline, then that may be 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 or otherwise become obligated. Furthermore, if it is found that the teaser price or conditions were never available, then the advertisement would be dishonest and may become the basis for disciplinary action. (Bus. & Prof. Code section 10140)

## Font Size

Depending on the message that one wants to convey, the advertising medium used, or the size of the advertisement intended, a number of different fonts and font sizes may be used. When considering the size of the font to use for required disclosures (e.g., license identification number, name of responsible broker, identification of licensing authority, etc.), use a font size that is no smaller than that used in the advertisement. If the font size of the smallest text used in the advertisement is 12-point, then required disclosures should be in an equal or greater font size. Licensees should avoid “mice type” or material that is sized so small that it cannot be clearly read. (Bus. & Prof. Code sections 10140.6, 10159.5, 10159.6, and 10159.7; CCR 2773)

## License Designation

Real estate licensees advertising in print media, such as newspapers and periodicals, must disclose that they are licensed as a real estate salesperson or broker by the State of California. This requirement may be satisfied by use of the following terms: broker, agent, realtor, loan correspondent, or the abbreviations bro., agt., or other similar terms or abbreviations. (Bus. & Prof. Code section 10140.6; CCR 2770.1)



## Disclosure of License Number - First Point of Contact Material

Solicitation or promotional materials intended to be the first point of contact with consumers include the following:

- Business cards;
- Stationery;
- Websites owned, controlled, and/or maintained by the soliciting real estate licensee;
- Promotional and advertising flyers, postal mail, leaflets, and any marketing or promotional materials designed to solicit the creation of a professional relationship between the licensee and a consumer, or which is intended to incentivize, induce, or entice a consumer to contact the licensee about any service for which a license is required;
- Advertisements in electronic media (including, without limitation, internet, email, radio, cinema,

and television advertisements, and the opening section of streaming video and audio);

- Print advertising in any newspaper or periodical; and
- “For sale,” “for rent,” “for lease,” “open house,” and directional signs that display the name of the licensee.

For first point of contact materials, a real estate broker or salesperson is required to disclose, at a minimum: (1) the real estate license identification number; (2) the responsible broker’s licensed name; and (3) the Nationwide Mortgage Licensing System (NMLS) unique identifier endorsement number (if a mortgage loan originator). If the name of more than one licensee appears in the solicitation, then the license number of each licensee must also be disclosed.

The license identification numbers of responsible or corporate brokers whose names, logos, or trademarks appear on solicitation materials along with the names and license numbers of salespersons or broker associates do not need to appear on those materials. Finally, if the advertising is in written form, then the type size of the license identification number must be no smaller than the smallest size type used in the advertisement. (Bus. & Prof. Code section 10140.6; CCR 2773)

## Keep Advertisements Current

Long lasting advertisements may present a special challenge for real estate licensees. Advertisements, such as telephone directories, billboards, Internet websites, or other signage may last for months or years after initially created. Conditions and terms may have changed over time, such that the advertising no longer reflects current conditions, name changes, or changes of the brokerage that were in place at the time the advertisements were purchased. Changes may have occurred from the time a print advertisement is bought, printed and/or distributed.

The old advertisement may not reflect an address change, change of business name, change of