

listing the DRE sponsor approval number.

- Advertising or materials promoting approved courses may not contain language implying or stating that a course can be completed in less time than the number of hours for which it is approved.
- Advertising or materials may not include false or misleading statements.
- Advertising must contain the sponsor identification number assigned by the Department. (CCR 3004, 3007.6)

## Other Advertising Issues

### “Coming Soon” Signs

“Coming soon” signs are generally used for homes that will be for sale soon but have not yet been placed on the market. This could be because the property is undergoing work that has not been completed, or because the seller is waiting for a particular time. “Coming soon” signs provide a number of benefits. They get people talking, create anticipation, and alert potential buyers and agents in the area. By the time the property is ready and placed on the market, interest has already been generated.

Unfortunately, “coming soon” signs have also been used to limit exposure to the property for a licensee’s benefit. Some licensees may use a “coming soon” strategy to obtain an exclusive advantage over other agents. Rather than place the property on the market and be receptive to all offers, the licensee limits exposure to the property and begins accepting offers before the property has been fully marketed. A client’s best interests may not be served by such a strategy and such offers may not be totally reflective of the marketplace.

Agents have a fiduciary duty to act in the best interests of their client and to place the client’s interests above all others. Licensees are also obligated to disclose everything material in the transaction that may affect their client’s decision. An agent may not limit exposure to the property and

keep a property from the market when it is not to the benefit of the client. Licensees acting in such a manner expose themselves to the potential for an increased chance of civil liability and regulatory action.



A “coming soon” advertising strategy may be used when it is to a seller’s benefit and if handled properly. The following are some best practices for agents when representing a seller:

- Market the property via the multiple listing service or other broad advertising means.
- Make sure the seller agrees to and understands how the property will be marketed.
- If using a “coming soon” strategy, do not accept and act on offers until the property has been broadly marketed.
- If the property will not be fully marketed, obtain prior written permission from the seller that demonstrates understanding that such a “coming soon” strategy may not result in receiving the best sales price.
- Avoid double-ending a property that is not fully marketed—it is best to refer potential buyers to another agent.

Always remember that working as an agent in real estate brings with it a responsibility to act in the best interests of the client with a high standard of care and adopt strategies that truly benefit the client. Such practices will enhance professionalism.

## Discrimination, Advertising, and Fair Housing

California law protects individuals from illegal discrimination based on race, color, sex/gender, religion, ancestry, disability, sexual orientation, marital status, medical condition, national origin, gender identity, age, and other classes. When conducting licensed real estate activities, licensees are prohibited from making, printing, publishing, or using advertisements that are discriminatory.

Some examples of prohibited discriminatory advertising include:

- Making advertisements that indicate preferences, limitations, or discriminations because of race, color, sex, religion, ancestry, disability, marital status, national origin and other classes, or any intention to make such preference, limitation, or discrimination.
- Using any words, phrases, sentences, descriptions, or visual aids advertisements describing real property or the area in which real property is located which indicates any preference, limitation, or discrimination because of race, color, sex/gender, religion, ancestry, disability, marital status, national origin, or other classes.
- Selectively using, placing or designing advertisements having to do with the sale, rental or financing of the purchase of real property which cause or increase discrimination by restricting or enhancing the exposure or appeal to persons of a particular race, color, sex/gender, ancestry, disability, marital status, national origin, or other classes.

When marketing services, a licensee's advertising should present no limitations on the consumer who is sought and, moreover, the licensee must be prepared to reasonably accommodate any consumer who seeks the advertised services of the industry professional. (CCR 2780.)

## Social Media and On-line Advertising

In addition to the basic advertising requirements for traditional media, such as print, radio, or television, licensees are also required to disclose the same information when advertising on the Internet or on social media platforms. If a licensee owns a website or controls its content, the website must include the license identification number of the person or entity offering the advertised service or property. Similarly, for social media, licensees must disclose their license status, satisfy the first point of contact materials requirements, and generally ensure their advertising is clear and truthful.



There are also additional requirements if a licensee is advertising escrow services or originating mortgage loans. (See sections on Advertising Escrow Services and Mortgage Loan Advertising.) (Bus. & Prof. Code sections 10140.6, 10235, 10235.5, 10236.1, 10236.4, and 10240.3; CCR 2770.1, 2773, 2847.3, and 2848)

## Professional Designations

An industry professional who is licensed in another profession, such as an engineer or lawyer, may include such information in their advertising as long as they are a member in good standing and/or appropriately licensed in that profession.

Similarly, real estate professionals may hold a professional designation or certification given to them through a professional or industry association. Designations that licensees have earned and have been awarded may be included in advertising, if they are valid and current. (Bus. & Prof. Code section 10176(a) and 10176(c))

Additionally, it is unlawful for a licensee to falsely claim membership in an association or to wrongfully use the logo or trademarks of an association to create the impression that the licensee is a member of an association. The term “REALTOR” and the capital “R” logo are associated with the National Association of REALTORS and are both registered trademarks. Claiming to be a REALTOR when not a member is a violation of the trademark and the Real Estate Law. It is also false, deceptive and misleading. (Bus. & Prof. Code section 10177(e))

## 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. While a broker may be able to advertise having 10 years of experience working in the industry, the broker’s advertising is deceptive if it creates the impression that the broker has held a real estate broker’s license for 10 years. (Bus. & Prof. Code section 10176(a) and 10176(c))

## Advertised Inducement or Offer of Referral Fee

It is lawful for industry professionals 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.

If funds or a gift are being given to a buyer who is obtaining financing, then the buyer’s lender must be made aware of the commission rebate or gift. Some lenders have regulations restricting or prohibiting payment of money or gifts to a buyer.

RESPA, or the Real Estate Settlement Procedures Act, should also be a factor when considering whether to offer a referral fee or gift to a settlement

service provider. RESPA, a federal law, states 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 that could include unlicensed, non-professional individuals.



Possible RESPA concerns aside, before paying a referral fee to an unlicensed person, make sure that person has not conducted activity requiring a real estate license. While the real estate law does not set a limit on the amount of a referral fee that may be paid, a licensee may not compensate any person for performing acts requiring real estate licensure who is not a licensed real estate broker or a real estate salesperson licensed under a responsible broker. If a licensee receives referrals from unlicensed persons, consider the following two-prong test:

- 1) Did the unlicensed, third party who brought the referral have an existing relationship with the buyer or seller?
- 2) If there was no existing relationship, how did the unlicensed person come to make the referral?

If they solicited the buyer or seller, knowing that the licensee had offered to pay compensation for each referral, then there may be a problem. Secondly, consider the number of referrals forwarded. Has there been one or have there been multiple referrals? A single referral may be indicative of “happenstance” (that is, a referral from an existing relationship), while multiple referrals may indicate, instead, deliberate targeting (e.g., a side business) to