



# PEET Realty Group

A Limited Function Referral Organization Brokerage

## Internet Policy

### Office Manual Guidelines for Real Estate Brokerages Firms

Version 3.0 TX

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**Table of Contents**

	<u>Page</u>
Title Page	1
Table of Contents	2
Preface: What is this manual?	3
Section 1: Definitions	4
Section 2: Internet Accounts and Service Providers	6
Section 3: E-mail Accounts and Guidelines	9
Section 4: Company Identity Standards	16
Section 5: Referencing On-line Information	20
Section 6: Consumer Information Usage Guidelines	24
Section 7: On-line Property Marketing Guidelines	31
Section 8: Agent Web Site Guidelines	35
Section 9: On-line Agent Promotion Guidelines	41
Appendix	44
§15 of the Real Estate License Act, Art. 6573a, Texas Civil Statutes	
§15B of the Real Estate License Act, Art. 6573a, Texas Civil Statutes	
§15C of the Real Estate License Act, Art. 6573a, Texas Civil Statutes	
§15D of the Real Estate License Act, Art. 6573a, Texas Civil Statutes	
22 TAC §535.154 - TREC Rules relating to advertising	
TAR Form entitled Information from Other Sources	
Various articles concerning advertising issues	
§107, Title 17, United States Code	

## **Preface: What is this manual?**

This manual is a supplement to your currently existing office policy manual. It contains information, procedures, and recommendations to assist your employees, managers, licensed agents and their assistants when using the Internet.

This manual is designed to help manage Internet activities. Some provisions in a section may refer to other sections. It is helpful for readers to be familiar with all sections in this manual.

In general, each section contains:

Background Information: A brief explanation of the technology or activity the policies in the section address. It may include any required technical information or specifications required for compliance by agents or managers.

Types of Activities Addressed in this Section: A list of typical activities or technologies that the recommended policies in the section address.

Policies: Policies for using the technology or on-line activity.

Sample Formats: Examples of certain recommended practices, such as typical disclosure language, that may be used and customized by your company.

Further Reference: A list of authors, documents, or Web sites for additional education or information about the technology or recommendations in the section.

Memoranda: Memoranda the company provides to employees and agents addressing items covered in the section.

There is an appendix to this manual that contains copies of articles, rules, or statutes that may be helpful when customizing the policies in this manual.

## **Section 1: Definitions**

**“Agent”** means a real estate licensee who performs brokerage services for the company and also includes licensed assistants of the agent.

**“Attachment”** means a file (such as a document, graphic, or multimedia content) attached in addition to the main text of an e-mail.

**“Company”** means the real estate brokerage firm adopting this policy and any of its branches, subsidiaries, and any affiliated firms or representatives with authority to act on its behalf, including licensed agents, managers, subcontractors or employees.

**“Consumer”** means anyone receiving the company’s products or services.

**“Consumer data”** means data collected or created by the company or its agents, or provided to it by consumers, for the purposes of delivering services. Examples of consumer data include property information, buyer needs, relocation information, financial records, tax data, and other information related to the business of the company.

**“Document”** as a noun means any electronic file or content that is published and includes items such as text files, spreadsheets, video clips, image files, or listing sheets; as a verb “document” means recording and storing a record of an activity covered by this policy either on paper or electronically.

**“E-mail”** means the electronic transmission of information, (sending, receiving, or forwarding) via specific protocols on the Internet such as TCP/IP protocols, SMTP, POP3 or IMAP protocols, and proprietary protocols. E-mail messages may include text, graphics, multimedia content, attachments, enclosures, documents, or other similar content.

**“Employee”** means the company’s management, staff, and non-licensed personal assistants.

**“Forwarding”** means either: (a) the resending of an e-mail to another person; or (b) the sending of information published on the Internet by e-mail to another person (for example, placement of an URL in the e-mail).

**“Host”** means any company offering on-line data storage for Web sites, computer data, or e-mail messages stored or made accessible to the public via the Internet.

**“Intranet”** means an internal local area or wide area computer network with potential access via the Internet. Intranet is also known as Extranet.

**“Internet”** means that system that the general public commonly refers to as the Internet. It is a collective term that refers to those electronic technologies or inter-connected systems such as the Internet, world wide Web, commercial on-line services, private or public electronic bulletin boards, e-mail tools or services, USENET/Newsgroups, on-line chat technologies, telnet, FTP space, bitnet, gopher space, UUCP, FidoNet, or similar technology.

**“Internet company policy (ICP)”** means this document or any amended version and includes any sections or other documents contained or referenced in this document such as supporting materials or any appendix.

**"Internet service provider (ISP)"** means any telecommunications company providing point-of-presence (POP) or similar access via any method (for example, dial-up, network, cable, or satellite) to any of the items listed in the term "Internet" or "Intranet".

**"Linking"** means placing the URL of another Web site in a Web page or an e-mail message. **"Sending a link"** means transmitting the URL to another person by an e-mail or instant communication message.

**"POP"** means post office protocol that is used in e-mail programs to deliver e-mail to the correct address. POP is also known as "point of presence," a site at which exists a collection of telecommunications equipment (usually digital leased lines and multi-protocol routers).

**"Published"** means that content is placed on the Internet, personal Web sites, classified ads, e-mail, newsgroups, on-line databases, or chat sessions. **"To publish"** means the act of typing, transferring, uploading, or otherwise creating or posting data on-line.

**"SPAM"** means the transmission of unsolicited e-mail or faxes or other forms of communications to Internet users. SPAM is the electronic form of "junk mail."

**"Third party"** means any company or individual who is not affiliated or employed by the company or an agent.

**"Uniform resource locator (URL)"** means the address of an Internet site, Web page, or a collection of either.

**"Web site"** means any collection of HTML or derivative Web content, such as a personal or corporate home page, Internet site, intranet site, URL or other location of information potentially accessible via the Internet.

## **Section 2: Internet Accounts and Service Providers**

### **Background Information**

An Internet account is any method of accessing and using the Internet or the world wide Web. Internet access is generally provided by an Internet service provider (ISP) who offers a gateway on-line for a monthly fee. Certain ISPs provide direct access to the Internet while others offer both private network and Internet access services. The costs and amounts of services vary.

One may access the Internet by telephone modem, cable modem, digital subscriber line (DSL), satellite, wireless and other broadband technologies. An ISP may provide a customer with single or multiple user accounts, multiple e-mail addresses (or aliases), and storage space for files or Web pages.

### **Types of Activities Addressed in this Section**

- Setting up and maintaining Internet accounts
- ISP hosting agreement compliance

### **Policies**

- 2.1 Agents and employees may not use company provided Internet accounts for personal purposes. The agent or employee must use a separate account for personal use. Agents and employees may not use the company's offices, computers, or facilities to access the Internet or e-mail for personal purposes.
- 2.2 Agents and employees may not share accounts or user names with any other person.
- 2.3 When an agent sets up an ISP account not provided by the company, the agent should verify that the ISP provides a POP-based Internet e-mail account.
- 2.4 Agents and employees must maintain and archive the agents' and employees' Internet account/settings.
- 2.5 In addition to complying with the policies stated in this section, agents and employees must choose all account names in conformity with the company identity standards found in Section 4.
- 2.6 If the agent's or employee's account name is not automatically assigned by the company, the ISP, or is not numeric, the account name must closely resemble the agent's or employee's name or the company's name.
- 2.7 Agents and employees may not use offensive, racist or sexually explicit content or terms when accessing the Internet, setting up accounts, passwords, names, or security codes.
- 2.8 When setting up an Internet access account or other Internet service, agents and employees may not reference activities that are prohibited by law, regulation, or NAR's Code of Ethics.

- 2.9 When setting up an ISP account or other Internet service agents and employees may not make references to geographic locations (towns, states, etc) outside of the jurisdiction of the agent's or employee's license.
- 2.10 Agents and employees must protect access to all Internet accounts with a password. Agents and employees must keep passwords confidential.
- 2.11 Agents and employees must read and comply with the provisions of the ISP agreement, especially pertaining to multiple users on one account and prohibitions against spam e-mailing.
- 2.12 Any agent or employee that uses an ISP that is not first reviewed by the company must review the ISP's privacy policy to ensure conformity with the company's privacy policy (Section 6) and any applicable state and federal laws and regulations.
- 2.13 Any agent or employee that uses an ISP that is not first reviewed by the company must check whether the ISP uses, resells, links to or otherwise provides access to the agent's or employee's account or e-mail to third parties in a manner not authorized by the agent or the company.
- 2.14 Agents that maintain personal Web sites must comply with Section 8 in choosing and maintaining Web sites.

#### **Further Reference**

For a list of Internet Service Providers, visit <http://www.thedirectory.org/>  
Sample Internet Service Provider Hosting Agreement, <http://www.att.net/general-info/policies.html>

## **Memoranda concerning Internet Account Compliance**

### **Memorandum**

Re: Personal vs. Business Use of Internet Accounts

It is the company's policy that all agents and employees are to use Internet and e-mail accounts for business purposes only. Agents and employees may not use company-provided accounts for personal use. Agents and employees should maintain separate accounts for any personal use and should not use the company's offices, computers, or facilities to access the Internet or e-mail accounts for personal use.

### **Memorandum**

Re: Sharing of Internet or E-mail Accounts

It is the company's policy that agents and employees may not share Internet or e-mail accounts. Each agent and employee is responsible for his or her assigned Internet and e-mail accounts.

### **Memorandum**

Re: Archiving Internet Account Settings

It is the company's policy that each agent and employee is to archive the agent's or employee's Internet account settings. Please be sure that you keep such information in a secure location that you can access or provide to the company if necessary. You may need to routinely update your archive information as your account settings change.

### **Memorandum**

Re: Passwords

It is the company's policy that agents and employees must protect access to Internet accounts with passwords. Agents and employees must keep those passwords confidential. Do not share passwords with others. Change your passwords periodically for security purposes.



## **Section 3: E-mail Accounts and Guidelines**

### **Background Information**

E-mail is a great Internet tool. For many consumers and companies, e-mail is a central tool for daily communications. E-mail makes it possible to create an effortless “electronic trail” for the company, its employees, and its agents to document communications with consumers. The proper creation, maintenance and use of e-mail will lead to enhanced customer satisfaction and productivity.

E-mail is increasingly the subject of potential local, state and federal communications regulations. In many areas, it is already subject to real estate licensing and marketing guidelines. Agents and employees need to understand the possibilities and limits of using e-mail to facilitate their business.

### **Types of Activities Addressed in this Section**

- Using POP or Web-based e-mail message systems
- Using e-mail software
- Posting messages into usenet/newsgroups, threaded discussion lists, bulletin or message boards, list serves and other electronic newsletters
- Using real time text and multimedia chat rooms
- Using electronic fax, document-to-e-mail, attachment or similar “paper-to-e-mail” communication services
- Using paging, instant messaging or Internet-to-telephony activities

### **Policies**

- 3.1 The company will assign each employee and agent an e-mail address at the company’s domain name. Agents with existing e-mail accounts or ISPs may use e-mail forwarding from the company assigned e-mail account to their existing e-mail accounts but are to use and promote the company assigned e-mail account to reinforce the company’s marketing efforts.
- 3.2 Agents and employees must use the company assigned e-mail accounts for all company-related activities and may not use the company assigned e-mail accounts for personal use.
- 3.3 Any account that an agent maintains for business purposes that is separate from the company assigned account must be maintained as a separate business account for real estate activities. Such accounts must be separate from any other person’s account and may not be shared with another person.
- 3.4 If an agent uses another account that is not the company assigned e-mail account, the agent may use only a POP-based e-mail account. The agent may not use a proprietary network or Web-based e-mail account (for example, AOL or Hotmail or MSN). The agent may not use systems that store messages on-line and that are not stored on the company’s or agent’s computer.

- 3.5 When using e-mail, agents and employees may use the company name only in the domain portion of the e-mail address (for example, [JohnSmith@prudentialsmith.com](mailto:JohnSmith@prudentialsmith.com), not [jsprudential@mindspring.com](mailto:jsprudential@mindspring.com)). Employees and agents may use the term “REALTOR®” only in connection with their name and not geographic terms or slogans (for example, [JohnSmithrealtor@gte.net](mailto:JohnSmithrealtor@gte.net), not [Dallasrealtor@att.net](mailto:Dallasrealtor@att.net) or not [Number1realtor@ev1.net](mailto:Number1realtor@ev1.net)). If using an account not provided by the company, agents must keep all e-mail messages together on one system for complete and timely access to past and present records.
- 3.6 When forwarding information from other sources by e-mail agents and employees must state, “The information is provided from \_\_\_\_\_ (source). I have no reason to believe it to be false or inaccurate. The information or link is for informational purposes only. I do not warrant or guarantee the information for accuracy or completeness. You may wish to independently verify the information.” The employee or agent must comply with Section 5.1 of this manual when forwarding information from other sources.
- 3.7 Agents and employees must choose e-mail addresses that comply with the company’s identity standards described in Section 4.
- 3.8 If the agent’s or employee’s e-mail address is not automatically assigned by the company or the ISP, the name used in the address must closely resemble the agent’s or employee’s real name or the company.
- 3.9 Agents and employees may not use offensive, racist or sexually explicit content or terms when using e-mail or setting up e-mail accounts, passwords, names, e-mail addresses, or security codes.
- 3.10 When setting up an e-mail account or address, agents and employees may not reference activities that are prohibited by law, regulation, or NAR’s Code of Ethics.
- 3.11 When setting up an e-mail account, agents and employees may not make references to geographic locations (towns, states, etc.) outside of the jurisdiction of the license that the agent or employee holds.
- 3.12 Agents and employees must avoid any e-mail account names or addresses that may cause a consumer to confuse the agent’s or employee’s real estate activity with another industry or activity.
- 3.13 Agents and employees may not use an e-mail name or address that may cause confusion with another company name or any service marks or trademarks not owned by the company.
- 3.14 Agents and employees must check their own e-mail messages. Unless authorized by the company, agents and employees may not permit other persons to access the agent’s or employee’s e-mail (with particular emphasis on e-mails from clients).
- 3.15 Agents and employees must check for e-mail messages at least twice each day.
- 3.16 Agents and employees must protect access to all e-mail accounts with a password and must keep the passwords confidential.

- 3.17 Agents and employees may not forward their e-mail messages to another person's account for remote access.
- 3.18 Agents and employees must utilize anti-virus software at all times. The agent and employee must update the software frequently, at least bi-weekly to maintain the latest list of inoculations. Antivirus software should be set to "auto detect" mode so that it actively scans all incoming or outgoing message transfers, especially attachments.
- 3.19 Agents and employees must frequently back up saved messages or data to an external media such as a diskette, CD-Rom, zip disk, network servers, on-line secure back-up service, or tape.
- 3.20 Agents and employees must maintain an "electronic-trail" of e-mail messages by storing both received and transmitted messages in an archival folder. E-mail concerning a transaction must be maintained in the transaction's permanent file.
- 3.21 Agents and employees may not delete older stored messages. If necessary the agent or employee is to archive messages to another file or database. The employee or agent is to retain all pertinent business messages in their entirety.
- 3.22 Agents and employees must transfer client e-mail messages to the broker upon termination of their affiliation with the company.
- 3.23 Agents and employees may not use e-mail services that place third-party names or messages within the messages sent from the service (for example, hotmail or jun0).
- 3.24 Agents and employees may not use "anonymous" e-mail services that hide or suppresses the agent's or employee's e-mail address or any part of the Internet message headers.
- 3.25 When using e-mail, the agent and employee is to include an approved signature file as plain text in the body of all e-mail messages. Signature files may be typed manually at the bottom of e-mail messages or automatically included using "signature file" tools within e-mail client software. Signature file content should appear in a color and typeface that is easily visible within the e-mail message and can be seen or printed on an ordinary video screen or black and white printer. If the agent or employee participates in a chat discussion or instant message session, the signature file information should be typed at the beginning of the session or included as part of the user profile in the chat event. The signature file should contain:
- the agent's or employee's name;
  - the company's name or acceptable acronym;
  - the company's address;
  - the company's telephone number;
  - a statement indicating the regulatory jurisdiction(s) in which the agent or employee holds a real estate license, such as, "Licensed as a salesperson in Texas";
  - the phrase "Equal Housing Opportunity" (suggested by not required);
- 3.26 Agents or employees that uses a digital ID from services such as Verisign must provide the "public key" to the company.

- 3.27 When using attachments to e-mail messages, employees and agents should use a format that the recipients can readily use, such as the most commonly used word processing version or graphics format (i.e., a .jpg photo file).
- 3.28 Agents and employees should exercise caution to attach only attachments of reasonable size so as not to harm the recipient's ability to use their e-mail.
- 3.29 Agents and employees should exercise caution so as to avoid transmitting attached files with viruses, worms, Trojans, malicious code or any other harmful electronic items.
- 3.30 Any e-mail sent by an agent or employee that could be perceived as a solicitation of business must comply with applicable provisions of the Real Estate License Act, TREC rules, and NAR's Code of Ethics. (See article in appendix for specific requirements.)
- 3.31 If an agent or employee uses an e-mail newsletter services, the agent or employee must not use a service that shares, resells, or uses for their own purposes the e-mail addresses of the subscribers to the newsletter.
- 3.32 When compiling e-mail newsletter mailing lists, the agent or employee should create such a list only through a voluntary subscription process such as a sign-up request form on the agent's or company's Web site. The agent or employee should not send the newsletter to those who have not asked or consented to receive it.
- 3.33 Any newsletter that asks for personal information must also contain either a copy of or a hyperlink to the company's privacy policy.
- 3.34 The responsible agent must include a signature file in each issue of an electronic newsletter.
- 3.35 Each edition of any electronic newsletter must include instructions that advise the recipient how to unsubscribe.
- 3.36 The agent or employee responsible for the newsletter must retain a record of all subscription and removal requests. The responsible agent or employee must promptly remove from the distribution list any person who requests to be removed. The agent or employee must send a copy to the broker or manager of the agent's or employee's office showing that the request to be removed from the list was honored.
- 3.37 The agent or employee responsible for the newsletter must retain a copy of each e-mail newsletter on disk, printed format, or other acceptable archive.
- 3.38 If a newsletter includes content from or links to any other source the agent or employee responsible for the newsletter must insure that the inclusion of the content or link does not violate any copyright law or any other law.
- 3.39 Agents and employees may not collect or purchase anonymous or bulk e-mail addresses for the purposes of sending unsolicited e-mail (SPAM).
- 3.40 Agents and employees may not post bulk or unsolicited e-mail messages into newsgroups, message boards, list serves or discussion forums.

- 3.41 Agents and employees may not send mass e-mail messages to distribution lists within the company's Intranet or local area network without the company's consent.
- 3.42 Any agent or employee using fax-to-e-mail transmissions or e-mail-to-fax transmissions must maintain a permanent log of all such transmissions.
- 3.43 Agents and employees may not conduct mass or bulk faxing using e-mail-based or internet-based fax distribution systems or services.
- 3.44 If an agent uses sold property data in e-mail messages, the agent may not quote the address unless the information is directed to a prospect or client only. The use of sold data in e-mail for mass marketing tools may include only non-specific information about sold property.

**Sample Formats:**

**Agent E-mail Addresses:**

**Agent Name:** *Approved:* [SallySmith@realtor.com](mailto:SallySmith@realtor.com) *Not approved:* [ISell4You@yahoo.com](mailto:ISell4You@yahoo.com)

**Signature File Formats**

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Agent Full Name and Designations	Sally L. Smith, CBR, GRI, LTG
Agent Firm Full Legal Name	ABC Brokers, Inc.
City, State, Zip Code	123 Main Street
Firm Main Telephone Number	London, TX 77777
Equal Housing Opportunity	Tel: 800-555-5555
Licensed in [STATE].	Equal Housing Opportunity
	Licensed as a salesperson in Texas and New Mexico.

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**Further Reference**

*Antivirus information:* [www.symantec.com/avcenter](http://www.symantec.com/avcenter)  
*Digital Signature information:* [www.verisign.com](http://www.verisign.com)  
*REALTOR® Code of Ethics:* <http://nar.realtor.com/about/ethicsframe.htm>

## **Memoranda concerning E-mail**

### **Memorandum**

Re: Use of Company-Assigned E-mail Accounts

It is the company's policy that agents are to use the company assigned e-mail accounts as their primary accounts for business purposes. Promote your company-assigned e-mail account on your business card, flyers, and other promotions. If you maintain a non-company e-mail account you may forward the e-mail in your company-assigned account (automatically or otherwise) that account, but you are not to promote the non-company account to customers and clients.

### **Memorandum**

Re: Personal vs. Business Use of E-mail Accounts

It is the company's policy that agents and employees are to use company provided e-mail accounts for business purposes only. Personal e-mail should not be received or sent from or maintained on the company's e-mail servers or computers.

### **Memorandum**

Re: Use of Proprietary Network or Web-Based E-mail

It is the company's policy that agents and employees use only POP-based e-mail accounts for business purposes. Agents and employees should not use proprietary network or Web-based e-mail accounts for business purposes (for example, AOL, Hotmail, or MSN).

### **Memorandum**

Re: Archiving E-mail Messages

It is the company's policy that each agent must keep all of the agent's e-mail messages together on one system in order to access records. Agents must frequently back-up saved messages on data to an external media such as a diskette, CD-Rom, zip disk, network service, on-line secure back-up service, or tape. Agents must keep an "electronic trail" of e-mail messages. Copies of all e-mail messages related to a transaction must be kept in the transaction's permanent file (either electronically or paper). Do not delete older stored messages that relate to a transaction.

### **Memorandum**

Re: Checking E-mail

It is the company's policy that agents and employees check for e-mail messages at least twice a day.

**Memorandum**

Re: Signature Files in E-mail Messages

It is the company's policy that agents and employees are to include a signature file on each e-mail message. The signature file is to contain:

- the agent's or employee's name;
- the company's name or acceptable acronym;
- the company's address;
- the company's telephone number;
- a statement indicating the regulatory jurisdiction(s) in which the agent or employee holds a real estate license, such as, "Licensed as a salesperson in Texas"; and
- the phrase "Equal Housing Opportunity".

You may use the tools within your e-mail software to have the signature file automatically included in your e-mail messages.

**Memorandum**

Re: Advertising and Solicitations by E-mail

Any agent or employee that uses e-mail as an advertising or promotional tool must be careful to comply with the advertising rules and regulations in the Real Estate License Act, TREC rules, and NAR's Code of Ethics. You must also comply with fair housing laws and, if you advertise financial terms, you must comply with the Truth-in-Lending Act.

Generally, all advertisements must be truthful and must not create a misleading impression. You must identify your license status in all advertisements and must include the name of the company. Be sure to read the enclosed information as a guide for compliance (*enclose copies or articles such as those found in the appendix or other information the company has compiled*).

**Memorandum**

Re: E-mail Newsletter

It is the company's policy that if an agent uses e-mail newsletters as promotional tools, the agent must:

- (a) send the e-mail newsletter only to those who have asked to receive it;
- (b) include instructions to readers on how to unsubscribe;
- (c) provide a copy to the company of all requests to subscribe or unsubscribe to the newsletter;
- (d) maintain a copy of each edition of the newsletter archived in an electronic or paper format;
- (e) include in each edition of the newsletter the information that is required to be in the agent's e-mail signature file; and
- (f) send a copy of each newsletter to the office manager.

## Section 4: Company Identity Standards

### Background Information

The Internet and e-mail are ideal marketing tools for agents and the company. Such marketing is accomplished on Web sites, through on-line advertising, and through e-mail. The purpose of this section is to assist the company in developing policies related to the use of its images and trademarked symbols on-line.

It is easy for marketing activities to reach consumers far beyond the licensed jurisdiction of the agent or company or for marketing to be misused or misappropriated by unauthorized third parties.

On-line publication of documents and Web sites require certain precautions and disclosures. Company graphics and logos need to be formatted to correspond to Internet-style usage and display settings.

### Types of Activities Addressed in this Section

- Using company logos, name, images or other trademarked graphics on-line
- Using logo and names in graphic ads or textual advertisements
- Using the company name in domain names or e-mail addresses
- Using third-party Web designers and Web site template services for Web pages
- Identity standards for attachments such as photos, documents and e-faxes
- Identity standards within automatic signatures files, HTML (rich-text) e-mail or other graphical e-mail templates

### Policies

- 4.1 Agents and employees must include the company's name on any document or item that the agent or employee publishes related to the company's business or operations (for example, advertising, e-mail messages, or Web pages).
- 4.2 When using the company's name, agents and employees must use the appropriate ® or ™ symbols. (Insert specific requirements for the company.)
- 4.3 When using the company logo or other company marks, the agent or employee must comply with specified dimensions, proportions, and colors that the company requires. (Insert specific requirements for the company.)
- 4.4 If an agent or employee uses any registered logos or graphic marks of another entity, the agent or employee must be authorized to use the logo or mark and must use the appropriate ® or ™ symbols (for example, "REALTOR®").
- 4.5 When publishing images on-line, agents and employees should create the images either by scanning high-quality masters provided by the company or using electronic versions the company provides.



- 4.6 When using any franchise logos or trademarks, agents and employees must include the appropriate logo disclaimer near the mark.
- 4.7 When using e-mail, agents and employees may use the company name only in the domain portion of the e-mail address (for example: [JohnSmith@prudentialsmith.com](mailto:JohnSmith@prudentialsmith.com) not [jsprudential@mindspring.com](mailto:jsprudential@mindspring.com))
- 4.8 Agents and employees may not use or authorize others to use the company's name within an agent's or third-party's domain name without the company's permission.
- 4.9 Agents and employees must use the company signature file (CSF) on each page of a Web site that the company or agents maintain (much of the information in the CSF is required by TREC rules to be on each page of a licensee's Web site).
- 4.10 Agents and employees must use the company signature file (CSF) when listing the company name in search indices, business directories, portals or industry related directory sites.
- 4.11 Agents and employees must use the CSF in template or database-generated Web pages provided by industry-related sites such as real estate association sites or multiple listing services.
- 4.12 Agents and employees must use the CSF in any advertisements published on the company's, agent's, or a third-party's Web sites.
- 4.13 Agents and employees must use the CSF in all marketing efforts such as e-mail newsletters, news groups, bulletin boards, list serves, e-mail digests, classified ads, and on-line chat functions
- 4.14 The CSF includes:
- the company's name;
  - the company's address;
  - the company's telephone number;
  - a statement indicating the regulatory jurisdiction(s) in which the company is authorized to conduct real estate brokerage activities (for example, "Licensed in (state)"
  - The phrase "Equal Housing Opportunity"; and
  - a copyright notice including date for company-originated published materials.
- The Real Estate License Act, TREC rules, and NAR's Code of Ethics requires most of the information noted above to be on each page of a licensee's Web site.
- 4.15 Agents and employees may not use third-party copyrighted or trademarked images, graphics, logos, cartoons or clip art pictures on Web sites or within graphical marketing without permission from the copyright holder. Agents and employees must document permission to use third-party marks. Agents and employees must be careful to maintain the size proportions, color, shape and print format of third-party names, logos or other graphical images in Web sites or when used as hyperlinks.

4.16 Agents and employees must acknowledge trademark and registration holders by using the appropriate symbols such as ® or ™ (for example, see NAR’s brochure concerning use of the term “REALTOR®” and the REALTOR® trademark).

**Sample Formats**

**Company Logos Available**

Use the logos and graphics that the company provides on disk or found at the company’s Web site.

**Sample Company Signature Format (CSF)**

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Company’s Name	Big Real Estate Corporation
Company’s Address	123 Main Street
City, State, Zip Code	London, TX 77777
Company’s Telephone Number	Tel: 800-555-5555
Equal Housing Opportunity	Equal Housing Opportunity
Licensed to practice real estate in [STATE].	A real estate broker licensed in TX.
© Copyright [YEAR]. All rights reserved.	© 2001. All rights reserved.

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## **Memoranda concerning Company Identity Standards**

### **Memorandum**

Re: Including Company Name on Documents

It is the company's policy that agents and employees are to include the company's name on any document or item that the agent or employee sends to others including advertising, flyers, e-mail messages, or content on Web sites.

### **Memorandum**

Re: Company Signature File

It is the company's policy that agents and employees use the company signature file when sending out any information about the company or promoting the company. The company signature file includes:

- the company's name;
- the company's address;
- the company's telephone number;
- a statement indicating the regulatory jurisdiction(s) in which the company is authorized to conduct real estate brokerage activities (for example, "Licensed in (state)")
- The phrase "Equal Housing Opportunity"; and
- a copyright notice including date for company-originated published materials.

## Section 5: Referencing On-line Information

### Background Information

The Internet contains vast amounts of data and Web sites that can be used to assist the company to conduct its business. Since any individual or organization can publish their own sites very easily, this poses a potential hazard for unwary users who may view data that “looks right” but may contain inaccurate or misleading information. The risks of information validity, currency or accuracy will vary depending upon the author and maintenance schedule of each site. Agents and employees must be aware of potential errors in on-line information and act to protect the consumer, the company, and themselves.

Generally, agents will not need to independently verify on-line content, but should use certain disclaimers before forwarding on-line content to others. Agents and employees should not use data in such a way that it might give the perception that the agent, employee, or company independently created, researched, or warranted the information.

The use (quoting, linking, framing, forwarding via e-mail) of works published on the Internet is protected under US Code, Title 16: Copyright Law as well as US Code, Title 15, Ch. 22, The Lanham Act regarding trademarks. Agents and employees should protect and indicate all copyrights, ensure usage meets the guidelines of the Fair Use provisions of Title 16, and clearly indicate author names and trademark symbols when referencing third-party materials found on the Internet.

### Types of Activities Addressed in this Section

- E-mailing a link to a Web site containing town, tax, or finance information
- E-mailing a listing sheet or property record
- Adding hyperlinks to school data or town Web sites on a Web site
- Including references to third party Web sites or content in newsletters or on-line marketing tools

### Policies

- 5.1 When sending information from other sources, agents and employees must include an approved Information Disclosure (ID) in references to third party content or Web sites. For example, “The information provided is from \_\_\_\_\_ (source). I have no reason to believe it to be false or inaccurate. The information or link is for informational purposes only. I do not guarantee or warrant the information for accuracy or completeness. You may wish to independently verify the information.”
- 5.2 Generally, agents and employees should not investigate, verify, or confirm information from another source, unless the agent or employee has reason to believe that the information is false or inaccurate.

- 5.3 In cases where selections or filtering of data can be made (such as selecting neighborhood features or selecting school criteria), avoid making any selections on behalf of a consumer. Instead, provide the URL or hyperlink to the content selections page and let the consumer make choices and view results of their own accord. If the information is accessible only to the agent or employee (for example, sites that permit membership-only access), the agent or employee should obtain and document specific search criteria from the consumer. The agent or employee should notify the consumer that the search criteria may be changed and that the agent or employee is entering the criteria at the consumer's specific instructions.
- 5.4 Agents and employees must be selective when framing around other Web sites. Framing Web sites may give the viewer the impression that the information comes from the agent, employee, or company and may increase liability.
- 5.5 Agents and employees may not copy, paste, or quote other sources (in text or graphics) in the agents' or employees' Web sites, e-mails, or other communications without quoting the source and including the statement in 5.1.
- 5.6 Agents and employees may not block, hide, or minimize references or information about third party authorship, copyright marks, trademarks and other registration marks when citing information from other sources in the agents' or employees' Web sites or e-mail.
- 5.7 Agents and employees must obtain advance written permission from any third party source or copyright holder if the agent or employee intends to use the information (including text, graphics, logos or trademarks) in any publication (newsletters or Web sites). Agents and employees must document permission from the author.
- 5.8 Agents and employees who link or provide information that is in the public domain to consumers may not charge the consumer for linking or providing the information.
- 5.9 Agents and employees must exercise reasonable care to maintain trademark image distinctiveness when printing, e-mailing or referencing the names, logos, marks or images of third-party content.
- 5.10 Agents and employees must abide by the "terms of use" or "display usage policies" on third-party Web sites.
- 5.11 Agents and employees may not modify, edit, or summarize third-party property data.
- 5.12 Agents and employees may not hide, edit, mislead, or create confusion when citing information about another broker's listings (including the listing brokerage, agent or owners). When providing information to a consumer about another broker's listing, the communication should be clear that the listing is not the agent's or employee's listing. The information must contain all information that your MLS requires (for example, listing broker's and/or listing agent's name may need to be included).
- 5.13 Proprietary company data posted on its Internet or Intranet sites, intended for use by agents and consumers, may not be republished in a public format (for example, linked or framed into an agent's Web site or forwarded via e-mail) without the company's permission.

- 5.14 Certain public information located on the company Internet or Intranet site (such as school data, public marketing campaign templates, marketing media files) may be linked-to, saved, printed, republished, and reproduced in public format only when those items would otherwise be accessible by a consumer without additional permission or security clearance.
- 5.15 Agents and employees may not provide proprietary company information to third-party Internet Web sites or design or marketing services without the company's permission.
- 5.16 Agents and employees must keep documentation of permission to use information from third parties in writing and stored in the company's permanent records.

<b>Sample Formats</b>
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**Information Disclosure (ID) to be included in e-mail containing or referencing third-party information:**

"The information provided is from \_\_\_\_\_ (source). I have no reason to believe it to be false or inaccurate. The information or link is for informational purposes only. I do not guarantee or warrant the information for accuracy or completeness. You may wish to independently verify the information."

**Information Disclosure (ID) to be included on Web sites containing content from or featuring hyperlinks to third party content:**

"Content or links to other Web sites is provided for informational purposes only. Users may through hypertext or other computer links gain access to other sites on the Internet that are not part of these Web pages. Agent/Company assumes no responsibility for any material outside of Agent/Company pages, which may be accessed through any such link. Agent/Company do not guarantee or warrant any third-party site content for accuracy or completeness. Consumers are encouraged to independently verify the information on other Web sites."

"The information on this Web site is believed to be accurate but no guarantee is made as to accuracy or completeness. Consumers are encouraged to independently verify the information before relying or acting upon it. Any information or data on this Web site may change at any time, including prior sale or withdrawal."

## **Memoranda about Referencing On-line Information**

### **Memorandum**

Re: Sending Information from Other Sources

It is the company's policy that when an employee or agent sends information to a customer or client, the employee or agent must identify the source of the information and follow certain procedures.

First, include the following statement in the message, "The information provided is from \_\_\_\_\_ (source). I have no reason to believe it to be false or inaccurate. The information or link is for informational purposes only. I do not guarantee or warrant the information for accuracy or completeness. You may wish to independently verify the information."

Second, if you have reason to doubt the accuracy of the information then do not send the information or be very careful to express your concerns clearly in writing when conveying the information. Seek the assistance of the office manager/broker in this case.

Third, do not edit the information from its original source and do not hide or minimize the identity of the source.

### **Memorandum**

Re: Searching for Information for Clients or Customers

It is the company's policy that an agent is not to search for information on behalf of customers or clients that involve subjective search criteria. Instead, direct the customer or client to sources where the customer or client may conduct the search (for example, direct the customer or client to certain on-line databases that may contain the information the customer or client seeks).

If a customer or client insists that an agent search for certain information, the agent must obtain and document the specific criteria that the customer or client wants to use. For example, if a customer or client asks the agent to obtain information about schools in the area, the agent must document what criteria the agent will use to search for this information. Determine: (a) what type(s) of schools are to be searched (grade schools, middle schools, high schools, private schools); (b) what constitutes the specific area to be searched; (c) what type of information is sought (location, age, tuition costs, ratings, size, financial).

## **Section 6: Consumer Information Guidelines Including Company Privacy Policy and Terms of Use Notification**

### **Background Information**

Placing consumer information on-line can enhance the company's services to a consumer by facilitating the exchange of data. However once data is posted on-line, it is easy for consumer data to proliferate from a single source to many other sources.

Consumer information used by the company during the transaction may appear on the Internet from a variety of sources outside of the company's immediate control, such as multiple listing services, media companies, and even by the consumers themselves. This data may be used in ways that are contrary to the company's or consumer's best interests. Therefore, careful protection and maintenance of company-published consumer data is necessary.

### **Types of Activities Addressed in this Section**

- Publishing consumer transaction data on company or affiliated services Web sites
- Automatic data transfer from partner parties such as MLS, marketing companies or association partners such as REALTOR.COM to unauthorized or unintended additional parties
- Publication by consumers of information on-line, for example, in classified ads, for-sale-by-owner, newsgroups, or the consumers' personal Web pages
- Inclusion of consumer information in e-mail newsletters or similar e-mail marketing tools
- Input of consumer data into third-party e-platforms or electronic transaction systems
- Input of consumer data into third-party on-line commission payment or tracking systems
- Input of consumer data into third-party on-line referral or lead-generating services

### **Policies**

- 6.1 Agents and employees should disclose, at the earliest opportunity, to consumers any anticipated publication of consumer data on-line by the agent, the company or known third-party, such as a franchise portal or multiple listing service.
- 6.2 Agents and employees should place consumer information only into company-approved third-party Web sites or services.
- 6.3 Agents and employees must regularly and timely update consumer information the agent or employee places on third-party sites. The agents and employees should use only those services that may be accessed by the agent or company to update any information.
- 6.4 When publishing consumer information on-line the agent and employee must document the following items in the consumer's file maintained at the company: (a) a list of the Web site(s) where the information is published; and (b) a dated, saved or printed copy of the data as originally published or submitted to the site, as well as a copy of any subsequent update.



- 6.5 If an agent or employee is made aware of any unauthorized use of published consumer information, the agent or employee must take reasonable steps to stop the unauthorized use, including: (a) documenting the unauthorized use by identifying and printing the URL and the time and date when the information was viewed on-line; (b) contacting the third-party in writing to request that the unauthorized use cease; (c) reporting the unauthorized use to a manager in the company; and (d) informing the consumer of the situation and the steps taken to resolve the matter.
- 6.6 Agents and employees must make the company's on-line privacy policy available to consumers.
- 6.7 Agents must include a link to the company's on-line privacy policy near any registration forms, e-mail submissions, polls, surveys or other consumer information gathering tools featured on the agents' Web sites.
- 6.8 Agents should include links to property data records instead of independently publishing such data into the agents' Web sites.

## Sample On-line Privacy Policy

**Our company is committed to maintaining your confidence and trust, and accordingly maintains the following privacy policy concerning the personal information you provide on-line.**

### **Basic Confidentiality Policy**

Information you provide to this company is stored in a secure location, is accessible *only* by designated staff, and is used only for the purposes for which you provide the information. For example, if you e-mail a representative of the company about a property for sale, the information you provide will be used to respond to you.

If you indicate on our sites that you would like to receive information about other company programs and services, such as publications or membership, your personal information will be added to the appropriate company mailing lists. If at any time you change your mind and would like to add or remove your name from a mailing list, or correct your information, please e-mail us at \_\_\_\_\_.

We will not release the personal information you provide via this Web site to third parties unless: (a) you authorize us to do so; (b) the release of the information is needed to accomplish the purpose for which you provide the information (for example, requesting a publication or asking the company to perform a particular service on your behalf); (c) if the release of the information is required by law; or (d) if the release of the information is pertinent to judicial or governmental investigations or proceedings.

### **No Computer Tracking of Identifiable Information**

Our computer is not set up to track, collect or distribute personal information about its visitors. While it recognizes the home server of visitors it does not recognize e-mail addresses. For example, we can tell which Internet service provider our visitors use, but not the names, addresses or other information about our visitors that would allow us to identify the particular visitors to our sites.

### **No personal information is collected.**

Our Web sites track information about the visits to our Web sites. For example, we compile statistics that show the daily number of visitors to our sites, the daily requests we receive for particular files on our Web sites, and what countries those requests come from. These aggregated statistics are used internally to better provide services to the public. The statistics contain no personal information and cannot be used to gather personal information.

### **Publication of your information as a customer.**

If you engage our services in an effort to sell your property or locate a property for you to purchase, we will publish only the relevant data necessary to sell your property or locate a property based upon your required specifications. We will comply with applicable state and federal real estate marketing regulations. We will not sell or provide your personal information to any third-party except to further the purpose for which you provide the information. We will not publish personal information, including your name, telephone number, or e-mail address in any publications unless authorized to do so. All marketing efforts citing your information will direct any inquiries to a company representative on your behalf.

**Acceptance**

By using this site, you are agreeing to this Privacy Policy. IF YOU DO NOT AGREE WITH THIS POLICY, PLEASE DO NOT USE THIS SITE. If you continue to use this site and any affiliated sites after changes are made to this policy will mean that you accept those changes.

This on-line Privacy Policy is in effect as of \_\_\_\_\_.

## Sample Terms of Use

By visiting or using this Web site, you agree to be bound by these terms of use ("Terms of Use"). If you do not wish to be bound by these terms of use, please do not visit or use this Web site.

COMPANY/AGENT maintains and operates this Web site ("Site") and associated Web pages, including its content and internal and external links. COMPANY/AGENT offers you limited access to the Site in exchange for your agreement to accept and comply with the terms and conditions stated herein. The Terms of Use may be modified from time-to-time without providing additional notification other than posting the Terms of Use on our site here.

### GENERAL TERMS OF USE AND LIMITATIONS UPON USE OF THIS SITE

You may access the Site solely for your personal and non-commercial uses. You promise not to use the Site, in whole or in part, for any purpose that is unlawful or prohibited by these Terms of Use or for any purposes other than those that are personal and non-commercial. **You agree that you will not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, frame in another Web page, link to, (re)sell any derived information, graphics, other content or services provided through or obtained from the Site.** You also agree not use the Site or its contents in any way that could damage or impair the general public's use of or access to the Site or its servers.

**Except with the written permission of COMPANY/AGENT, you agree not to create links from any Web site or Web page to any page or content within the Site.**

If we operate a bulletin board, forum or other publicly accessible area wherein anybody can post messages or interact via live chat, the COMPANY/AGENT assumes no responsibility for the content of any such messages or information. COMPANY/AGENT retains the right at its sole discretion, to review, edit or delete from its Site any materials that it deems to be illegal, offensive or otherwise inappropriate.

Users may through hypertext or other computer "links" gain access to other sites on the Internet, which are not part of the site. COMPANY/AGENT assumes no responsibility for any material outside of COMPANY/AGENT pages that may be accessed through any such "link."

YOU AGREE THAT:

YOUR USE OF OR RELIANCE UPON ANY INFORMATION APPEARING ON THIS SITE, INCLUDING BUT NOT LIMITED TO AFFILIATE CONTENT AND PUBLIC WORKS PROVIDED BY COMPANY/AGENT THROUGH THE SITE IS AT YOUR SOLE RISK. ALL CONTENT IS PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED REPRESENTATIONS OR GUARANTEES WITH REGARD TO ITS APPROPRIATENESS, ACCURACY, COMPLETENESS OR TIMELINESS. COMPANY/AGENT DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. COMPANY/AGENT SHALL HAVE NO LIABILITY TO THE USER OF SUCH INFORMATION WITH RESPECT TO ANY LOSS, EXPENSE OR DAMAGE, INCLUDING CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES AND INCLUDING LOST PROFITS OR LOST REVENUE, CAUSED DIRECTLY OR INDIRECTLY BY THE USE OR RELIANCE UPON SUCH INFORMATION.

ANY CONTENT DOWNLOADED THROUGH THE USE OF THE SITE IS AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

BY USING THIS SITE YOU ARE AGREEING TO ABIDE BY THE TERMS OF USE. IF YOU DO NOT AGREE, PLEASE DO NOT USE THIS SITE. IF YOU CONTINUE TO USE THIS SITE OR ANY AFFILIATED SITES AFTER CHANGES ARE MADE TO THESE TERMS OF USE WILL MEAN THAT YOU ACCEPT THOSE CHANGES.

## **Memoranda about Referencing On-line Information**

### **Memorandum**

Re: Updating Information on the Internet

It is the company's policy that when an agent places information on the Internet or authorizes information to be placed on the Internet, the agent must exercise care to update the information. Any such information may include information about properties listed for sale, the agent, or the company.

The information an agent places on the Internet must be dated so that consumers can see when the information was placed on the Internet or last updated.

Agents must regularly visit Web sites in which the agent has authorized information to be placed. The agent must check to see if the information is current or needs to be updated. The agent should take reasonable steps to update the information appropriately.

Agents must keep a permanent record that contains a list of Web sites on which the agent has authorized information to appear and a dated copy of the data as it was originally submitted to the site, as well as any update.

### **Memorandum**

Re: Unauthorized Use of Information Placed On-line

It is the company's policy that an agent may not place information on the Internet or authorize information to be placed on the Internet concerning the company, the company's listings, or the agent unless the company has authorized it to be placed on the Internet. If you have any doubt as to whether you are complying with this policy, check with the office manager.

## Section 7: On-line Property Marketing Guidelines

### Background Information

Marketing property on-line is treated separately in this section since there may be additional considerations for publishing and maintaining property data in on-line media. On-line marketing is beneficial for consumers and the company. On-line marketing must be conducted within the same regulatory requirements that apply to traditional (print) media marketing.

The most important distinction between marketing properties in print media and on-line media is time. In print-based marketing, property advertising is generally “print once, then forget” meaning that information appearing in newspapers, magazines, or flyers is deemed accurate as of the date it is printed. It typically does not require “updating” except for new versions at later dates.

Since the Internet is a “constant, real-time” phenomenon, on-line marketing increases the need for consistent data maintenance and the accurate display of publication dates.

To limit any confusion on the part of the consumer and to comply with advertising regulations, certain practices can be established relating to the appearance and accuracy of on-line property data.

### Types of Activities Addressed in this Section

- Publishing property ads in electronic newsletters, newsgroups, bulletin boards, public or private chat rooms, e-mail digests, or list serves
- Direct e-mail of property ads, open house announcements or similar marketing that features specific property data
- Placing on-line classified ads featuring property photos, data or specifications
- Featuring property records on agent or company Web sites, including searchable databases or framed links to approved sites

### Policies

- 7.1 When publishing information on-line, agents and employees must use a disclaimer similar to the statement found in Section 5.1 of this manual. If published by e-mail, the agent or employee must use the personal signature file information detailed in Section 3 of this manual.
- 7.2 Agents and employees must include a “publication date” indicating the original placement or latest update to the information published on-line.
- 7.3 Agents and employees must update or remove any on-line property advertisements as soon as possible after the status of the information changes and, in no event, should the agent or employee permit inaccurate information to be left on-line for more than 5 days.

- 7.4 Agents and employees must include in any on-line marketing advertisements any disclosures or statements that may be required in traditional (print) media. For example, the agent's license status must be disclosed, the information must not be likely to mislead the viewer, the information must not violate any law (such as fair housing laws), and any required disclosure must be included (such as information relating to rebates or concessions).
- 7.5 Agents and employees must include all appropriate symbols, such as company logos, fair housing symbols, MLS, REALTOR®, and other appropriate symbols or graphics that normally are included in traditional property advertisements.
- 7.6 All on-line property marketing should direct the public to contact the agent or company for more information.
- 7.7 Agents and employees may place information about listings only on the following Web sites:
- the company's Web site;
  - the agent's Web site;
  - the public Web site of a multiple listing service in which the listing is placed;
  - the parent site of the company's franchisor; and
  - Realtor.com

Property data related to the company's listings may not be placed on any other Web sites without the company's approval.

- 7.8 Agents and employees should try to avoid placing property information onto sites that feature banner ads, text about, or links to direct company competitors or their affiliates, such as sites that are sponsored by, owned by, affiliated with or share traffic with competing brokerage firms or competing finance, closing, property maintenance or services similar to those offered by the company.
- 7.9 Agents and employees should try to avoid sites that use company or agent listing data to offer the public "blind" comparisons, market analyses, public reports or other enticements without complete and clear reference to the agent and company information.
- 7.10 Agents should try to avoid placing property information in sites that attract public visitors through marketing or offering pricing or commission models that are contrary to acceptable company policies.
- 7.11 Agents may not republish or recreate listing inventory manually on their personal Web sites. The agent may provide a link to the information maintained on the company's Web site.
- 7.12 Agents may purchase a gateway or data feed service at their own expense from vendors that the company approves to maintain a single-channel of property input, update and display of listing data on their personal Web site only.
- 7.13 Agents may not integrate gateway or data feed services from approved vendors into unapproved third-party Web sites such as unapproved template-based Web site services.



- 7.14 All property records appearing on agent Web sites should be accompanied by a link to the “privacy policy” and “terms of use” statements.
- 7.15 On-line classified ads placed by agents or employees should feature a link to the property record from approved inventory sites only.
- 7.16 If an agent or employee uses a service that automatically transfers or duplicates print advertising content onto an Internet site, the agent or employee must determine if: (a) the resulting transfer or duplication complies with the policies set forth in this manual with particular emphasis on any regulatory requirements; (b) the information appears in its entirety, including photographs or other graphical marks; (c) the service has sufficient procedures in place for timely updates and removal of inaccurate information; (d) the service displays a “publication date” indicating the date the information was transferred from print medium; and (e) the service provides a link to the full property data from approved data vendors.
- 7.17 Agents and employees may not place property information into sites that include any other contact information on or near the property data other than the company or agent contact information.
- 7.18 Agents and employees may not place property information into sites that hide, edit or confuse the agent or company contact information with any other site features such as banner ads or other consumer services of third parties.
- 7.19 Agents may not place property information into sites that share, link to, or resell the information to any entity, unless otherwise stated in this manual or permitted by the company.
- 7.20 If an agent or employee references non-company property information in on-line marketing efforts, the agent or employee must maintain a complete reference to the original publication, such as a multiple listing service site or the listing broker’s site.
- 7.21 Agents and employees may not forward, copy, paste, duplicate, frame-in an agent Web site or otherwise publish or transmit listings data from other brokerage firms without appropriate permission (for example, a reciprocal agreement from the other broker or permitted to do so as a member of a multiple listing service).
- 7.22 Agents and employees may not use services that e-mail or transmit non-company listing data to consumers if the service changes, hides, suppresses or modifies the listing data, including the omission of the listing contact information.
- 7.23 If an agent uses sold property data in on-line marketing, the agent may not quote the address unless the information is directed to a prospect or client only. The use of sold data on Web sites or on mass marketing tools may include only non-specific information about sold property.
- 7.24 Agents and employees may not post details about a sale on the Internet for marketing purposes unless the owner (buyer) of the property grants such permission and the agent or employee maintains a record of the permission.

## Memoranda about Marketing Property On-line

### Memorandum

Re: Updating Information on the Internet

It is the company's policy that when an agent places information on the Internet or authorizes information to be placed on the Internet, the agent must exercise care to update the information. Any change in status in a property listed for sale must be updated as soon as possible and, in no event, more than 5 days after the status changed. It is the agent's responsibility to regularly visit Web sites in which information about the agent's listings appears.

### Memorandum

Re: Authorized Web Site on which Property Information may be Placed

It is the company's policy that an agent may place information about listings only at the following Web sites: (a) the company's Web sites; (b) the agent's Web site (c) the public Web site of the multiple listing service; (d) the Web site of the company's franchisor; and (d) Realtor.com. *(Modify this memorandum to cite specific Web site addresses.)*

## **Section 8: Agent Web Site Guidelines**

### **Background Information**

Creating a Web site on the Internet has become as easy as creating a word processing document or a flyer. Individuals may use easy-to-use software that is available on most personal computers to create individual Web sites. Agents often undertake to design and maintain their own Web sites or engage the assistance of paid Web site services. Some agents employ the services of turn-key or template Web design companies to reduce development time and facilitate management of their sites. In other cases, agents use a combination of free on-line site generating tools and personal site development to create effective Web sites.

The following guidelines have been designed to assist agents in maximizing exposure when creating and maintaining their Web sites as well as for managing the Web sites.

### **Activities Addressed in this Section**

- Web sites created by agents and programmed by a Web page designer
- Agent Web pages within REALTOR.COM, local REALTOR® association sites, etc.
- Company or brand sites featuring agent pages
- MLS-provided profile pages
- Personal Web sites created by the agent at public communities such as search portals, town or state sites, and other on-line clubs
- Personal Web "pages" that are "sub-pages" of larger third-party sites such as a personal "page" of a large local town directory, on-line classified database, or yellow pages or similar directory.

### **Policies**

- 8.1 Agents may purchase personal Web site services only from services that the company approves such as: (list acceptable services).
- 8.2 No Web sites from third parties, such as trade associations, free services, or paid services may display the Company name, link to the company's property inventory, or display any information about the company without the company's consent.
- 8.3 Agents' personal Web sites must be distinct and separate from any other person's Web site.
- 8.4 The domain name and content on an agent's personal Web site must comply with the company's identity standards.
- 8.5 The domain name of an agent's personal site must sufficiently reference the agent's name or reference real estate brokerage activities.
- 8.6 The domain name of an agent's personal site must not be offensive, racist or sexually explicit.

- 8.7 The domain name of an agent's Web site must not violate any law or regulation (for example, the Real Estate License Act or TREC rules). See articles in appendix for specific information.
- 8.8 Unless otherwise authorized, agents may not use domain names that include the company's name or the company's trademarks (For example, [www.company.org](http://www.company.org) or [www.company-agentname.org](http://www.company-agentname.org)).
- 8.9 Agents may not use domain names that confuse the agent's Web site with the company's trademarks, services, or slogans.
- 8.10 Agents may not use domain names that create confusion as to the identity of the company or the agent with another real estate brokerage company, agent, or real estate related service.
- 8.11 Agents may not use domain names that confuse the site, agent or company with any other type of industry, site, or service.
- 8.12 Agents may not use domain names that confuse the site with public domain information such as a school site, mapping services, weather services or town information site.
- 8.13 Agents with Web sites not provided by the company must register and renew all domain names under the agent's name only.
- 8.14 Agents with Web sites not provided by the company must register and retain ownership of the domains by maintaining, at a minimum, the agent as the "registrant" and "administrative contact" for all of the agent's sites and domains.
- 8.15 Agents with Web sites not provided by the company should have a system in place in order to remind the agent to timely renew registered domain names to protect the domain against potential loss.
- 8.16 Agents with Web sites not provided by the company should post copyright notices on the Web site in the agent's name.
- 8.17 Agents with Web sites not provided by the company should not permit Web hosts or designers to post their copyrights on the Web site.
- 8.18 Agents with Web sites not provided by the company should password protect on-line access to the Web code and files of the Web site, virtual domain, and Web host server.
- 8.19 Agents with Web sites not provided by the company should maintain a full, current copy of Web site code on the agent's computer or external storage medium as a back-up and archive.
- 8.20 Agents may not use layouts, color-coding, menu or navigation systems, or other site designs that do not comply with the company's identity standards.
- 8.21 Agents must avoid framing information from other Web sites if it may cause confusion as to the source of the information.

- 8.22 Agents with Web sites not provided by the company should avoid using navigation frames, pop-up windows, new browser windows, java code, multimedia code, or other displays that hide, suppress or confuse the names, logos or trademarks of third-party content within or upon leaving the agent's Web site.
- 8.23 Agents with Web sites not provided by the company should avoid using technologies such as cookies or scripts that capture visitor information without their prior knowledge or consent.
- 8.24 Agents placing information about properties on the agents' Web sites must include any required disclosure and personal signature file information. All information about property placed on an agent's Web site must include a "publication date" indicating the most recent update.
- 8.25 Agents must timely update or remove any on-line property advertisements on the agents' Web sites and must comply with any applicable MLS rule or state or federal statute or regulation.
- 8.26 Agents with Web sites not provided by the company must include all required disclosures and disclaimers as is required in traditional print media (for example, disclosing the agent's license status or disclosures concerning fees or rebates).
- 8.27 Agents must include all appropriate symbols, including company logos, fair housing symbols, MLS logos, REALTOR® trademarks, and other relevant symbols or graphics that are included in traditional printed advertisements.
- 8.28 On-line marketing from an agent's Web site should direct the public to contact the agent or company for assistance or further information.
- 8.29 On-line marketing may not feature third-party contact information (for example, the seller's contact information).
- 8.30 Within the footer of each page of an agent's Web site, the agent must include:
- (a) all of the information that is contained in the agent's personal signature file as described in Section 3.25 of this manual;
  - (b) an e-mail link to the agent's e-mail box;
  - (c) a link to a separate page containing the company's privacy policy;
  - (d) the Equal Housing Opportunity Logo or a link to [www.hud.gov](http://www.hud.gov);
  - (e) a link to a separate page containing a "Terms of Use" notice;
  - (f) a copyright notice in the agent's name; and
  - (g) the company's or agent's name.
- 8.31 The first page published or displayed on an agent's Web site (other than a multimedia introduction) must display:
- (a) the company's name and logo at the top of the page;
  - (b) a specific link to the company's on-line privacy policy;
  - (c) a link to a separate page containing a "Terms of Use" notice;
  - (d) an e-mail link to the agent's e-mail box; and
  - (e) a link to the company's Web site or a listing of the company's address and telephone numbers.

- 8.32 Agents with Web sites not provided by the company must review the Web designer's policies to determine if the policies comply with the company's privacy policy and terms of use policy.
- 8.33 Agents with Web sites not provided by the company must monitor and ensure that no links exist to or from the agent's Web sites to or from other sites that may contain offensive, racist, or sexually explicit content.
- 8.34 Agents with Web sites not provided by the company may not use metatags or similar Web design efforts that feature words or terms unrelated to the agent, company, or real estate to trigger results in search engines.
- 8.35 Agents with Web sites not provided by the company may not display on their Web sites advertising or banner ads/swaps for third parties unaffiliated to the company unless authorized by the company.
- 8.36 Agents with Web sites not provided by the company may not sell or receive compensation for the inclusion of third party services, references, or links on their Web sites unless authorized by the company.

## Memoranda about Agent's Web Sites

### Memorandum

Re: List of Acceptable Web Site Developers

It is the company's policy that agents may use only company-approved Web site developers for their Web sites. Listed below are the Web site services that you may use.

### Memorandum

Re: Agents' Web Site Addresses

It is the company's policy that agents with Web sites must notify the company of the address of the Web sites. Please make sure that the office manager has a list of all your Web site addresses.

### Memorandum

Re: Use of Company Name on Agents' Web Sites

It is the company's policy that the company name as it appears on agents' Web sites must be in compliance with the company's identity standards. Those standards are as follows: *(insert company standards)*.

### Memorandum

Re: Agents' Web Site Compliance Issues

It is the company's policy that agents with Web sites must comply with the following.

The domain name and Web site content must comply with the company's identity standards and with all applicable laws, rules, and regulations. For example, the domain names may not cause confusion about the agent, the company, or the services that the agent will provide.

Agents must register and renew the domain names not provided by the company only under the agent's name. Do not permit your Web site developer to register the domain in its name.

The agent, at a minimum, must be listed as the registrant and administrative contact for all of the agent's Web sites. Make sure that your e-mail is current on all registrations and contact information for each Web site. Failure to keep the e-mail current may cause problems.

A system should be in place to remind the agent to timely renew the domain names.

The copyright symbols on the agent's Web sites should be held in the agent's name and not in the name of the Web site developer.

Agents should maintain a full, current copy of Web site code on the agent's computer or back-up devices.

Do not use technologies such as cookies or scripts to capture visitor information without the visitor's consent.

The Web site must contain the information that the company requires the agent to have in the agent's personal signature file. This information must be placed on each page of the agent's Web site. The personal signature file information is as follows:

- (a) the agent's or employee's name;
- (b) the company's name or acceptable acronym;
- (c) the company's address;
- (d) the company's telephone numbers;
- (e) a statement indicating the regulatory jurisdiction(s) in which the agent or employee holds a real estate license, such as, "Licensed as a salesperson in Texas"; and
- (f) the phrase "Equal Housing Opportunity".

Additionally, in the footer of each page the agent must include:

- (a) an e-mail link to the agent's e-mail box;
- (b) a link to a separate page containing the company's privacy policy;
- (c) the Equal Housing Opportunity Logo or a link to [www.hud.gov](http://www.hud.gov);
- (d) a link to a separate page containing a "Terms of Use" notice;
- (e) a copyright notice in the agent's name; and
- (f) the broker's or company's name.

The first page published or displayed on an agent's Web site (other than a multimedia introduction) must display the company's name and logo at the top of the page.

The agent may not sell advertising on the Web sites to any person without the company's consent.

Agents must keep the information on their Web sites current.



## Section 9: On-line Agent Promotion Guidelines

### Background Information

On-line promotional activities range from direct e-mail marketing to participation in referral, directory and search portals for the purpose of advertising real estate services to the general public. Such personal promotion should be conducted in conformity with advertising laws, including disclosure of real estate license jurisdictions and established company policies regarding services, professional fees, agency representation, and image standards.

### Types of Activities Addressed in this Section

- Publishing the agent's name, e-mail or Web site in search indices, portals or directories
- Using banner ads or banner ad swaps featuring an agent or company information
- Participating in chat rooms or on-line text or conferences, list serves, newsgroup threads, electronic newsletters or other forms of e-mail-based interaction
- Participating in industry-specific directories
- On-line lead-generating services
- On-line referral or lead-swapping services or directories
- Direct e-mail marketing services or traffic generating services for Web sites

### Policies

- 9.1 Agents may not promote themselves on sites or e-mail services that contain or link to advertising for sites that engage in offensive, racist, or sexually explicit content.
- 9.2 Agents' promotions must include the information required to be in the personal signature file as described in Section 3.25 of this manual.
- 9.3 Agents' marketing activities on the Internet may not compromise company identification standards by using text, graphics, pictures, or fonts that do not meet the company's standards.
- 9.4 Agents must include appropriate logos such as the REALTOR®, MLS, Fair Housing or other special logos in on-line personal promotional materials such as html-pages.
- 9.5 Agents may not use on-line marketing to portray the impression that the agents' or company services are available in any area beyond appropriate license jurisdictions.
- 9.6 For the purposes of reselling or referring consumer inquiries to licensees in other jurisdictions agents may not engage in interstate referral or FSBO mining services.
- 9.7 Agents may not participate in personal marketing sites or services that focus on price or commission structures not approved by current company policies.
- 9.8 Agents that publish the agent's name or other information in search engines, portals, directories, newsgroups, or trade association sites must comply with the following.

- 9.8.1 Agents must publish within all directories or search engines, the agent's contact information (the contents of the agent's personal signature file) and an appropriate description of the agent's and company's services.
- 9.8.2 Agents may not use subject lines, search words, keywords or metatags that involve terms unrelated to real estate or racist, sexually explicit, or offensive terms for the purposes of attracting Web traffic.
- 9.8.3 Agents must periodically check Web site listings in search indices for accuracy and completeness.
- 9.8.4 Agents must document and archive submissions to any search index or directory at the time of initial entry or any update.
- 9.9 If an agent participates in chat rooms or other live communications for promotional activities, the agent must reference the personal signature file information immediately upon entering the discussion.
- 9.10 Agents may not use barter-based marketing services (such as banner swaps or link exchanges) that may "swap" items (such as banner ads or cross-links) that contain, host or link to sites that engage in offensive, racist or sexually explicit content.
- 9.11 Agents may not use search portals or directories that exaggerate the agents' or company's services, skills, or specialty areas.
- 9.12 If an agent's association with the company ceases for any reason, the agent must remove or edit personal marketing entries in search engines or other sites and remove references to the company.

## **Memoranda about On-line Agent Promotions**

### **Memorandum**

Re: Information in On-line Promotions

When an agent uses any on-line promotional tools, the agent must be sure to include the information that the company requires the agent to have in the agent's personal signature file. The personal signature file information is as follows:

- the agent's or employee's name;
- the company's name or acceptable acronym;
- the company's address;
- the company's telephone numbers;
- a statement indicating the regulatory jurisdiction(s) in which the agent or employee holds a real estate license, such as, "Licensed as a salesperson in Texas"; and
- the phrase "Equal Housing Opportunity".

On-line promotions must comply with the company's identity standards.

### **Memorandum**

Re: Updating Information in On-line Promotions

When an agent uses any on-line promotional tools, the agent must periodically check the Web sites at which the promotions are hosted to determine if the information is current.

### **Memorandum**

Re: Verifying Services for On-line Promotions

Agents should periodically check to see if their on-line promotional services are properly promoting the agents' Web sites. Verify this through commonly used search engines.

## **Appendix**

Section 15 of the Real Estate License Act, Article 6573a, Texas Civil Statutes	45
Section 15B of the Real Estate License Act, Article 6573a, Texas Civil Statutes	49
Section 15C of the Real Estate License Act, Article 6573a, Texas Civil Statutes	50
Section 15D of the Real Estate License Act, Article 6573a, Texas Civil Statutes	52
22 TAC §535.154 - TREC Rules relating to advertising	55
TAR Form entitled Information from Other Sources	57
Various articles concerning advertising issues	
On your mark: A trademark pocket reference for members (December 1989)	58
The Advertising Commandments for Texas REALTORS® (Sept./Oct. 1997)	63
Trademark infringement and the Internet: Entering a new domain (Winter 1997)	67
Internet advertising questions and answers (August 1998)	71
Section 107, Title 17, United States Code	75

**Section 15, Real Estate License Act, Article 6573a, Texas Civil Statutes**

**Investigations; Suspension or Revocation of License; Civil or Criminal Liability**

Sec. 15. (a) The commission may, on its own motion, and shall, on the signed complaint in writing of a consumer or service recipient, provided the complaint, or the complaint together with evidence, documentary or otherwise, presented in connection with the complaint, provides reasonable cause, investigate the actions and records of a real estate broker or real estate salesperson. The commission may suspend or revoke a license issued under the provisions of this Act at any time when it has been determined that:

(1) the licensee has entered a plea of guilty or nolo contendere to, or been found guilty of, or been convicted of, a felony, in which fraud is an essential element, and the time for appeal has elapsed or the judgment or conviction has been affirmed on appeal, irrespective of an order granting probation following such conviction, suspending the imposition of sentence;

(2) the licensee has procured, or attempted to procure, a real estate license, for the licensee or a salesperson, by fraud, misrepresentation or deceit, or by making a material misstatement of fact in an application for a real estate license;

(3) the licensee, when selling, buying, trading, or renting real property in the licensee's own name, engaged in misrepresentation or dishonest or fraudulent action;

(4) the licensee has failed within a reasonable time to make good a check issued to the commission after the commission has mailed a request for payment by certified mail to the licensee's last known business address as reflected by the commission's records;

(5) the licensee has disregarded or violated a provision of this Act;

(6) the licensee, while performing an act constituting an act of a broker or salesperson, as defined by this Act, has been guilty of:

(A) making a material misrepresentation, or failing to disclose to a potential purchaser any latent structural defect or any other defect known to the broker or salesperson. Latent structural defects and other defects do not refer to trivial or insignificant defects but refer to those defects that would be a significant factor to a reasonable and prudent purchaser in making a decision to purchase;

(B) making a false promise of a character likely to influence, persuade, or induce any person to enter into a contract or agreement when the licensee could not or did not intend to keep such promise;

(C) pursuing a continued and flagrant course of misrepresentation or making of false promises through agents, salespersons, advertising, or otherwise;

(D) failing to make clear, to all parties to a transaction, which party the licensee is acting for, or receiving compensation from more than one party except with the full knowledge and consent of all parties;

(E) failing within a reasonable time properly to account for or remit money coming into the licensee's possession that belongs to others, or commingling money belonging to others with the licensee's own funds;

(F) paying a commission or fees to or dividing a commission or fees with anyone not licensed as a real estate broker or salesperson in this state or in any other state for compensation for services as a real estate agent;

(G) failing to specify a definite termination date that is not subject to prior notice in a contract, other than a contract to perform property management services, in which the licensee agrees to perform services for which a license is required under this Act;

(H) accepting, receiving, or charging an undisclosed commission, rebate, or direct profit on expenditures made for a principal;

(I) soliciting, selling, or offering for sale real property under a scheme or program that constitutes a lottery or deceptive practice;

(J) acting in the dual capacity of broker and undisclosed principal in a transaction;

(K) guaranteeing, authorizing, or permitting a person to guarantee that future profits will result from a resale of real property;

(L) placing a sign on real property offering it for sale, lease, or rent without the written consent of the owner or the owner's authorized agent;

(M) inducing or attempting to induce a party to a contract of sale or lease to break the contract for the purpose of substituting in lieu thereof a new contract;

(N) negotiating or attempting to negotiate the sale, exchange, lease, or rental of real property with an owner, lessor, buyer, or tenant, knowing that the owner, lessor, buyer, or tenant had a written outstanding contract, granting exclusive agency in connection with the transaction to another real estate broker;

(O) offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized agent, or on terms other than those authorized by the owner or the owner's authorized agent;

(P) publishing, or causing to be published, an advertisement including, but not limited to, advertising by newspaper, radio, television, or display which is misleading, or which is likely to deceive the public, or which in any manner tends to create a misleading impression, or which fails to identify the person causing the advertisement to be published as a licensed real estate broker or agent;

(Q) having knowingly withheld from or inserted in a statement of account or invoice, a statement that made it inaccurate in a material particular;

(R) publishing or circulating an unjustified or unwarranted threat of legal proceedings, or other action;

(S) establishing an association, by employment or otherwise, with an unlicensed person who is expected or required to act as a real estate licensee, or aiding or abetting or conspiring with a person to circumvent the requirements of this Act;

(T) failing or refusing on demand to furnish copies of a document pertaining to a transaction dealing with real estate to a person whose signature is affixed to the document;

(U) failing to advise a purchaser in writing before the closing of a transaction that the purchaser should either have the abstract covering the real estate that is the subject of the contract examined by an attorney of the purchaser's own selection, or be furnished with or obtain a policy of title insurance;

(V) conduct that constitutes dishonest dealings, bad faith, or untrustworthiness;

(W) acting negligently or incompetently in performing an act for which a person is required to hold a real estate license;

(X) disregarding or violating a provision of this Act;

(Y) failing within a reasonable time to deposit money received as escrow agent in a real estate transaction, either in trust with a title company authorized to do business in this state, or in a custodial, trust, or escrow account maintained for that purpose in a banking institution authorized to do business in this state;

(Z) disbursing money deposited in a custodial, trust, or escrow account, as provided in Subsection (Y) before the transaction concerned has been consummated or finally otherwise terminated; or

(AA) discriminating against an owner, potential purchaser, lessor, or potential lessee on the basis of race, color, religion, sex, national origin, or ancestry, including directing prospective home buyers or lessees interested in equivalent properties to different areas according to the race, color, religion, sex, national origin, or ancestry of the potential owner or lessee;

(7) the licensee has failed or refused on demand to produce a document, book, or record in the licensee's possession concerning a real estate transaction conducted by the licensee for inspection by the commission or its authorized personnel or representative;

(8) the licensee has failed within a reasonable time to provide information requested by the commission as a result of a formal or informal complaint to the commission that would indicate a violation of this Act; or

(9) the licensee has failed without just cause to surrender to the rightful owner, on demand, a document or instrument coming into the licensee's possession.

(b) The provisions of this section do not relieve a person from civil liability or from criminal prosecution under this Act or under the laws of this state.

(c) Notwithstanding Subsection (b) of this section, a person is not subject to civil liability or criminal prosecution because the person did not inquire about, make a disclosure related to, or release information related to whether a previous or current occupant of real property had, may have had, has, or may have AIDS, HIV-related illnesses, or HIV infection as defined by the Centers for Disease Control of the U.S. Public Health Service.

(d) The commission may not investigate under this section a complaint submitted more than four years after the date of the incident involving a real estate broker or salesperson that is the subject of the complaint.

(e) The commission may request and, if necessary, compel by subpoena the attendance of witnesses for examination under oath and the production for inspection and copying of books, accounts, records, papers, correspondence, documents, and other evidence relevant to the investigation of alleged violations of this Act. If a person fails to comply with a subpoena issued under this subsection, the commission, acting through the attorney general, may file suit to enforce the subpoena in a district court in Travis County or in the county in which a hearing conducted by the commission may be held. The court, if it determines that good cause exists for the issuance of the subpoena, shall order compliance with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as contempt.



**Section 15B, Real Estate License Act, Article 6573a, Texas Civil Statutes**

**Investigations; suspension, revocation, reprimand, probation**

Sec. 15B. (a) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of this Act unless expressly authorized by the commission after due consideration of the circumstances and determination by the commission that such measures are necessary to carry out the purposes of this Act. No investigations of licensees or any other actions against licensees shall be initiated on the basis of anonymous complaints whether in writing or otherwise but shall be initiated only upon the commission's own motion or a signed written complaint from a person. Upon the adoption of such motion by the commission or upon receipt of such complaint, the licensee shall be notified promptly and in writing unless the commission itself, after due consideration, determines otherwise.

(b) In addition to any other authority granted by this Act, the commission may revoke or suspend a license, place on probation a person whose license has been suspended, or reprimand a licensee for a violation of this Act or a rule of the commission.

(c) The commission may, upon majority vote, rule that an order revoking, canceling, or suspending a license be probated upon reasonable terms and conditions determined by the commission.

(d) If a license suspension or revocation is probated, the commission may require the licensee:

(1) to report regularly to the commission on matters that are the basis of the probation;

(2) to limit practice to the area prescribed by the commission; or

(3) to continue to renew professional education until the licensee attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(e) The commission may authorize a commission employee to file a signed written complaint against a licensee and to conduct an investigation if:

(1) a judgment against the licensee has been paid from a recovery fund established under this Act;

(2) the licensee is convicted of a criminal offense that may constitute grounds for the suspension or revocation of the licensee's license; or

(3) the licensee fails to make good a check issued to the commission.

**Section 15C, Real Estate License Act, Article 6573a, Texas Civil Statutes**

**Disclosure of representation**

Sec. 15C. (a) A licensee under this Act who represents a party in a proposed real estate transaction shall disclose that representation at the time of the licensee's first contact with:

- (1) another party to the transaction; or
- (2) another licensee who represents another party to the transaction.

(b) The disclosure required under Subsection (a) of this section may be made orally or in writing.

(c) A licensee who represents a party in a real estate transaction acts as that party's agent.

(d) Except as provided by Subsection (e) of this section, a licensee shall furnish to a party in a real estate transaction at the time of the first face-to-face meeting with the party the following written statement:

"Before working with a real estate broker, you should know that the duties of a broker depend on whom the broker represents. If you are a prospective seller or landlord (owner) or a prospective buyer or tenant (buyer), you should know that the broker who lists the property for sale or lease is the owner's agent. A broker who acts as a subagent represents the owner in cooperation with the listing broker. A broker who acts as a buyer's agent represents the buyer. A broker may act as an intermediary between the parties if the parties consent in writing. A broker can assist you in locating a property, preparing a contract or lease, or obtaining financing without representing you. A broker is obligated by law to treat you honestly.

"IF THE BROKER REPRESENTS THE OWNER: The broker becomes the owner's agent by entering into an agreement with the owner, usually through a written listing agreement, or by agreeing to act as a subagent by accepting an offer of subagency from the listing broker. A subagent may work in a different real estate office. A listing broker or subagent can assist the buyer but does not represent the buyer and must place the interests of the owner first. The buyer should not tell the owner's agent anything the buyer would not want the owner to know because an owner's agent must disclose to the owner any material information known to the agent.

"IF THE BROKER REPRESENTS THE BUYER: The broker becomes the buyer's agent by entering into an agreement to represent the buyer, usually through a written buyer representation agreement. A buyer's agent can assist the owner but does not represent the owner and must place the interests of the buyer first. The owner should not tell a buyer's agent anything the owner would not want the buyer to know because a buyer's agent must disclose to the buyer any material information known to the agent.

"IF THE BROKER ACTS AS AN INTERMEDIARY: A broker may act as an intermediary between the parties if the broker complies with The Texas Real Estate License Act. The broker must obtain the written consent of each party to the transaction to act as an intermediary. The written consent must state who will pay the broker and, in conspicuous

bold or underlined print, set forth the broker's obligations as an intermediary. The broker is required to treat each party honestly and fairly and to comply with The Texas Real Estate License Act. A broker who acts as an intermediary in a transaction: (1) shall treat all parties honestly; (2) may not disclose that the owner will accept a price less than the asking price unless authorized in writing to do so by the owner; (3) may not disclose that the buyer will pay a price greater than the price submitted in a written offer unless authorized in writing to do so by the buyer; and (4) may not disclose any confidential information or any information that a party specifically instructs the broker in writing not to disclose unless authorized in writing to disclose the information or required to do so by The Texas Real Estate License Act or a court order or if the information materially relates to the condition of the property. With the parties' consent, a broker acting as an intermediary between the parties may appoint a person who is licensed under The Texas Real Estate License Act and associated with the broker to communicate with and carry out instructions of one party and another person who is licensed under that Act and associated with the broker to communicate with and carry out instructions of the other party.

"If you choose to have a broker represent you, you should enter into a written agreement with the broker that clearly establishes the broker's obligations and your obligations. The agreement should state how and by whom the broker will be paid. You have the right to choose the type of representation, if any, you wish to receive. Your payment of a fee to a broker does not necessarily establish that the broker represents you. If you have any questions regarding the duties and responsibilities of the broker, you should resolve those questions before proceeding."

(e) A licensee is not required to provide the written information under Subsection (d) of this section if:

(1) the proposed transaction is for a residential lease for not more than one year and no sale is being considered; or

(2) the licensee meets with a party who is represented by another licensee.

(f) In the written information required to be provided under Subsection (d) of this section, the licensee may substitute the word "buyer" with "tenant" and "seller" with "landlord" as appropriate.

(g) The written information required to be provided under Subsection (d) of this section may be printed in any format that uses at least 10-point type.

(h) A real estate broker may act as an intermediary between the parties if:

(1) the real estate broker obtains written consent from each party to the transaction for the real estate broker to act as an intermediary in the transaction; and

(2) the written consent of the parties under Subdivision (1) of this subsection states the source of any expected compensation to the real estate broker.

(i) A written listing agreement to represent a seller or landlord or a written agreement to represent a buyer or tenant that also authorizes a real estate broker to act as an intermediary in a transaction is sufficient to establish written consent of the party to the transaction if the written agreement sets forth, in conspicuous bold or underlined print, the real estate broker's obligations under Subsection (j) of this section.

(j) A real estate broker who acts as an intermediary between parties in a transaction:

(1) may not disclose to the buyer or tenant that the seller or landlord will accept a price less than the asking price unless otherwise instructed in a separate writing by the seller or landlord;

(2) may not disclose to the seller or landlord that the buyer or tenant will pay a price greater than the price submitted in a written offer to the seller or landlord unless otherwise instructed in a separate writing by the buyer or tenant;

(3) may not disclose any confidential information or any information a party specifically instructs the real estate broker in writing not to disclose unless otherwise instructed in a separate writing by the respective party or required to disclose such information by this Act or a court order or if the information materially relates to the condition of the property;

(4) shall treat all parties to the transaction honestly; and

(5) shall comply with this Act.

(k) If a real estate broker obtains the consent of the parties to act as an intermediary in a transaction in compliance with this section, the real estate broker may appoint, by providing written notice to the parties, one or more licensees associated with the broker to communicate with and carry out instructions of one party and one or more other licensees associated with the broker to communicate with and carry out instructions of the other party or parties. A real estate broker may appoint a licensee to communicate with and carry out instructions of a party under this subsection only if the written consent of the parties under Subsection (h) or (i) of this section authorizes the broker to make the appointment. The real estate broker and the appointed licensees shall comply with Subsection (j) of this section. However, during negotiations, an appointed licensee may provide opinions and advice to the party to whom the licensee is appointed.

(l) The duties of a licensee acting as an intermediary provided by this section supersede and are in lieu of a licensee's duties under common law or any other law.

(m) In this section:

(1) "Face-to-face meeting" means a meeting at which a substantive discussion occurs with respect to specific real property. The term does not include a meeting that occurs at a property being held open for prospective purchasers or tenants or a meeting that occurs after the parties to the transaction have signed a contract to sell, buy, rent, or lease the real property concerned.

(2) "Intermediary" means a broker who is employed to negotiate a transaction between the parties subject to the obligations in Subsection (j) of this section and for that purpose

may be an agent of the parties to the transaction. The intermediary shall act fairly so as not to favor one party over the other. Appointment by the intermediary of associated licensees under Subsection (k) of this section to communicate with, carry out instructions of, and provide opinions and advice to the parties to whom the licensees are appointed is a fair and impartial act.

(3) "Licensee" means a real estate broker or real estate salesperson and includes a licensed associate of a licensee.

(4) "Party" means a prospective buyer, seller, landlord, or tenant or an authorized representative of a party, including a trustee, guardian, executor, administrator, receiver, or attorney-in-fact. The term does not include a licensee who represents a party.

(5) "Subagent" means a licensee who represents a principal through cooperation with and consent of a broker representing the principal and who is not sponsored by or associated with the principal's broker.

**Section 15D, Real Estate License Act, Article 6573a, Texas Civil Statutes**

**Liability for providing information**

Sec. 15D. No licensed real estate broker, licensed real estate salesperson, or not-for-profit real estate board or association that provides information about real property sales prices or terms of sale for the purpose of facilitating the listing, selling, leasing, financing, or appraisal of real property shall be liable to any other person as a result of so providing such information unless the disclosure of same is otherwise specifically prohibited by statute.

**22 TAC §535.154, Misleading Advertising  
(TREC Rule)**

(a) For the purposes of this section, an "advertisement" is a written or oral statement that induces or attempts to induce a member of the public to use the services of a real estate licensee. The term "advertisement" includes, but is not limited to all publications, radio or television broadcasts, all electronic media including E-mail and the Internet, business stationary, business cards, signs and billboards. The provisions of this section apply to all advertisements by a real estate licensee unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement. Provided, however, a communication from a licensee to a member of the public after the member of the public agreed for the licensee to provide services is not an advertisement for the purposes of this section.

(b) A licensee may not utilize a copyrighted trade name unless the licensee has legal authority to use the name.

(c) A broker shall notify the commission in writing within 30 days after the broker, or a salesperson sponsored by the broker, starts or stops using a name in business other than the name in which the person is licensed. Licensees may not use the name of a salesperson, including an assumed name, in advertisements unless the sponsoring broker's name or assumed name also appears. If the commission is notified of a licensee's use of an assumed name that contains only the name of a salesperson, including an assumed name, the commission shall notify the licensee, and the licensee's sponsoring broker, if any, that use of the name alone in advertising is grounds for disciplinary action under this section.

(d) In an advertisement placed by a licensee that does not readily identify the licensee as a real estate agent, the advertisement must include an additional designation such as "agent," "broker" or a trade association name that serves clearly to identify the advertiser as a real estate agent.

(e) Because salespersons may lawfully engage in brokerage activity only when they are associated with, and acting for, a broker, a listing may be solicited and accepted only in a broker's name. Advertisements concerning a broker's listings must include information identifying the advertiser as a real estate broker or agent. The name of a salesperson sponsored by the broker may also be included in the advertisement, but in no case shall a broker or salesperson place an advertisement that in any way implies that the salesperson is the person responsible for the operation of a real estate brokerage.

(f) A corporation or limited liability company licensed as a real estate broker may do business in the name in which it was chartered or registered by the Secretary of State.

(g) A licensee's advertising must not cause a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage, provided that an advertisement of a trade, business, or assumed name does not constitute a holding out that a specific person is engaged in real estate brokerage.

(h) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies as a real estate broker or agent the person publishing the advertisement. Advertisements in which the required language is not clear and conspicuous shall be deemed by the commission to be deceptive and likely to mislead the public for the purposes of Texas Civil Statutes, Article 6573a (the Act), §15(a)(6)(P). The commission shall consider language as clear and conspicuous if it is in at least

the same size of type or print as the largest telephone number in the advertisement, or it otherwise clearly and conspicuously identifies as a real estate broker or agent the person who published it. The commission shall consider advertisements not to be in compliance with this subsection if the required language is in print or type so small that it cannot be easily read from the street or sidewalk. This subsection does not apply to signs placed on real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the provisions of the Act regarding advertising.

(i) A real estate licensee placing an advertisement on the Internet, electronic bulletin board, or similar mechanism must include on each page on which the licensee's advertisement appears any information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(j) A real estate licensee placing an advertisement by using any electronic communication, including but not limited to E-mail and E-mail discussion groups, must include in the communication and in any attachment that is an advertisement the information required by this section and the disclosure relating to the advertiser's status as a broker or agent required by §15(a)(6)(P) of the Act.

(k) An advertisement containing an offer to rebate to a principal a portion of a licensee's commission must disclose that payment of the rebate is subject to the consent of the party the licensee represents in the transaction . If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.

(l) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the licensee and the licensee expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the licensee may receive compensation from the service provider.





**TEXAS ASSOCIATION OF REALTORS®**  
**NOTICE OF INFORMATION FROM OTHER SOURCES**

THIS FORM IS FURNISHED BY THE TEXAS ASSOCIATION OF REALTORS®  
FOR USE BY ITS MEMBERS. USE OF THIS FORM BY PERSONS WHO ARE NOT MEMBERS  
OF THE TEXAS ASSOCIATION OF REALTORS® IS NOT AUTHORIZED.  
©Texas Association of REALTORS®, Inc. 1995

*Use this form when communicating written information from another source*

TO: \_\_\_\_\_  
FROM: \_\_\_\_\_ (Broker)  
DATE: \_\_\_\_\_

The undersigned Broker advises you that the attached written information, \_\_\_\_\_, was obtained from \_\_\_\_\_.

Broker has relied upon the attached information and does not know and has no reason to know that the attached information is false or inaccurate, except \_\_\_\_\_.

Broker does not warrant or guarantee the accuracy of the attached information. Do not rely on the attached information without verification or confirmation.

\_\_\_\_\_  
Broker

By: \_\_\_\_\_

Received by: \_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

**On your mark: A trademark pocket reference for members (December 1989)**

***Introduction***

Trademarks are useful tools. They help us distinguish among products, services and, yes, sometimes people. We know that when we ask for a Pepsi-Cola® brand soft drink we don't get Coke®. Similarly, when the public asks for a REALTOR® or sees the block "R" logo, we want them to know that they're getting more than a real estate licensee -- they're getting a member of the NATIONAL ASSOCIATION OF REALTORS®. Every time you tell the public you are a REALTOR®, you tell them you subscribe to a strict Code of Ethics, you are a member of the largest trade association in the U.S., you are informed about issues that affect real estate business. That's a lot of mileage from one trademark! So, it's important to always use the REALTOR® marks and logo correctly to identify yourself as a member of the National Association.

The National Association has developed guidelines on the proper use of the REALTOR® marks and logo. These may be found in detail in the Membership Marks Manual (Policy Reference File 109; Form No. 126-958) available for purchase from the National Association or for review at your local Board office. We have summarized the guidelines in the five limitations that follow.

***Who? The membership limitation***

Member Boards have either one (REALTOR®) or two (REALTOR® and REALTOR-ASSOCIATE®) classes of membership. REALTOR® members are authorized to use the terms REALTOR® and REALTORS® and the REALTOR® logo. REALTOR-ASSOCIATE® members are authorized to use the term REALTOR-ASSOCIATE® and the REALTOR-ASSOCIATE® logo.

A non-member is never authorized to use the REALTOR® marks or logo in connection with his or her name. A member broker may, however, authorize a non-member salesperson affiliated with him or her to use business supplies except business cards on which the marks or logo have been used in reference to the member broker's name or firm.

***What? The real estate business limitation***

Members are licensed to use the marks and logo in connection with their real estate business. "Real estate business" includes real estate brokerage, property management, mortgage financing, real estate appraising, real estate counseling, real estate syndication, land development and building. Members are not authorized to use the marks and logo in connection with a real estate school, the sale of office supplies, the offering of real estate franchise offices, etc.

***Where? The geographic limitation***

Members are authorized to use the REALTOR® marks and logo within the territory of their Member Board. Outside that territory, the marks must be accompanied by the business name and address within your Board's jurisdiction. You may not use the marks in reference to other offices unless you belong to the Member Board responsible for the jurisdiction in which those offices are located.

***When? The context of use limitation***

The terms REALTOR®, REALTORS® and REALTOR-ASSOCIATE® and the block "R" logo are collective membership marks. The terms do not describe the jobs real estate licensees perform. When you are asked what you do for a living, describe your profession before you use the term REALTOR® to indicate you are also a member of a local Board and committed to a strict Code of Ethics. For example, say, "I am a real estate broker and also a REALTOR®." On the same note, please remember to distinguish words that describe jobs or lines of business such as "builder" or "insurance" from the marks: e.g. use "INSURER, REAL ESTATE AGENT, BUILDER" not

"INSURER, REALTOR®, BUILDER." Use the marks only when talking about your membership in the local Board, State Association or National Association. Follow this rule: If the phrase "member of the NATIONAL ASSOCIATION OF REALTORS®" cannot logically be substituted for the term REALTOR®, then the term REALTOR® should not be used. Instead, use a descriptive phrase like "real estate agent."

***How? The form of use limitation***

The terms REALTOR®, REALTORS® and REALTOR-ASSOCIATE® should appear in all capital letters and the federal registration symbol "®" should be used with each term whenever possible: e.g. John Jones, REALTOR®, not John Jones, Realtor®.

- Use the terms REALTOR® or REALTORS® in connection with, rather than as part of, your firm name. It's John Doe, Inc., REALTOR®, not John Doe, REALTOR®, Inc.
- Punctuation should be used to separate your name or firm name from the terms even when they appear on separate lines:  
e.g. John Jones --  
REALTOR®
- Say REAL-tor as a two-syllable term with emphasis on the first syllable "REAL," not REAL-i-ter or REAL-a-ter.
- Use non-member, instead of non-REALTOR®, when referring to one who is not a member.
- When speaking of more than one member, use REALTORS® and REALTOR-ASSOCIATE®s.
- Avoid possessives whenever possible and when not, use REALTOR®'s (singular possessive) or REALTORS®' (plural possessive). For the term REALTOR-ASSOCIATE®, it's REALTOR-ASSOCIATE®'s (singular possessive) or REALTOR-ASSOCIATE®'s' (plural possessive).
- Don't hyphenate (REAL-TOR); abbreviate (Rltr.); expend (Realtorific); or combine the term REALTOR® or the registered marks REALTORS® or REALTOR-ASSOCIATE® with other terms (REALTOR®-ASSISTANT).
- Don't use descriptive words to modify the term: e.g. "Professional REALTORS®"; "Commercial REALTOR®"; "Twin City REALTORS®".

The REALTOR® logo has been designed specifically to take advantage of certain size and contrast relationships among its component parts. Official glossy reproduction proof sheets are available for your use from the Trademark Coordinator at the National Association.

- always display the logo in its correct form. The proper dimensions of the logo are represented by superimposing the logo on a grid:



- when used on a dark background, be sure to reverse all components of the logo:



- use sharply contrasting single color for the logo unless you're using REALTOR® Gold for the "R" and REALTOR® Blue for the block and term REALTOR® (both are special Pantone colors):
- when the logo appears alone on a window decal, etc. without other wording, allow margins:



- allow a space of at least one half the width of the block "R" logo when using the logo on letterhead, signs, etc.:



- use a logo that is large enough so that all the parts -- the block "R," the term REALTOR®, and the symbol "®" -- can be seen:



- the REALTOR® logo must never be distorted or altered.
- Don't eliminate parts such as the term REALTOR®.



- Don't outline or frame the logo or parts of the logo:



- Don't combine with other symbols or words:



- Don't redraw, change the size or letter type of portions of the logo:



REALTOR®

REALTOR®



REALTOR®



Additional copies of this pocket reference are available through the National Association's REALTORS® Products and Services (1-800-874-6500). For additional information on proper use of the collective membership marks, please contact the Trademark Coordinator at the NATIONAL ASSOCIATION OF REALTORS®, 430 N. Michigan Ave., Chicago, IL 60611-4087 or call 312/329-8373.

**The Advertising Commandments for Texas REALTORS® (September/October 1997) *Texas REALTOR®* by Jerome L. Prager, Prager & Benson, P.C.**

Increased use of the Internet, CD-ROMs and other new media doesn't alter the fundamentals.

As we settle into the Information Age, many of us are becoming more comfortable with instant communications, instant retrieval of information and instant satisfaction of our needs as consumers. New technologies are enabling real estate licensees to promote their firms and properties with more information and in a more appealing format than ever before.

In addition to many of the traditional media such as classified newspaper ads, yard signs, multiple listing services and various home magazines, brokers are using electronic media including videos and computer-generated descriptions of homes to give the public instant access to information about themselves and properties.

The increased exposure and avenues for advertising only underscore the importance of understanding the rules and regulations that affect real estate advertising, as well as guidelines from the National Association of REALTORS® (NAR) and local associations of REALTORS®.

This article provides Texas REALTORS® with an overview of those rules and regulations. For this discussion the terms "advertising" and "marketing" are used interchangeably. The term "licensee" refers to both a licensed broker and a licensed salesperson, as defined in the Texas Real Estate License Act (TRELA), Article 6573a of the Texas Revised Civil Statutes.

**Marketing the broker and the salesperson**

Generally speaking, honesty and truthfulness in advertising is the most fundamental concept in all applicable statutory law, rules and regulations. The laws allow brokerage firms to advertise and promote their services and special expertise, as long as those advertisements are truthful. Section 5(z) of TRELA says the Texas Real Estate Commission (TREC) may only restrict advertising that is "false, misleading, or deceptive." TREC may not adopt any rule that restricts a licensee in the use of any particular medium for advertising or the use of the licensee's voice or picture in an advertisement.

Section 15(a)(6)(P) of TRELA authorizes TREC to take disciplinary action against a licensee who is responsible for an advertisement (in any media) that is likely to deceive the public or that in any manner tends to create a misleading impression, or one that fails to identify the advertiser as a licensed real estate broker or agent.

There is no clear line that delineates the difference between mere puffing, on one hand, and exaggeration, ambiguity or inaccuracy, on the other hand. Aggressive licensees who opt to walk a fine line are placing their licenses in jeopardy.

All marketing materials and advertising copy should be reviewed by a broker who is familiar with the rules to ensure compliance. Questionable marketing materials should be submitted to the broker's legal counsel for review and approval.

TREC rules for regulating advertising by licensees [Title 22 of the Texas Administrative Code (TAC), Section 535.154] require brokers to file an assumed name certificate with TREC if they transact business under a name other than their legal name. Any advertising under an assumed

name that does not readily identify the broker as a real estate licensee must specify that the advertiser is a real estate agent or broker.

Article 12 of the NAR Code of Ethics admonishes REALTORS® to present a true picture in their advertising and representations to the public, as well as clearly identify their status as a broker, appraiser, leasing agent or property manager in any advertising.

Some licensees use inducements in their advertising, such as offering a free market analysis, a free home evaluation or other similar enticements. This kind of advertising is permissible. However, special attention should be given to spelling out all the terms related to the availability of the offered product or service. If there are hidden “hooks,” a REALTOR® may end up as the respondent in a professional standards hearing. Standard of Practice 12-1 of the Code of Ethics requires disclosure of all of the terms governing the availability of the service or product, as well as the potential for the REALTOR® to obtain a benefit from a third party. If the prospect is required to obligate himself (e.g. list the property) to the REALTOR®, the offered service is not free or without charge and, therefore, the promotional material is considered misleading and deceptive.

### **Marketing listed properties**

“A licensee has a duty to convey accurate information to members of the public with whom he deals,” according to 22 TAC, Section 535.156(d).

Before advertising any property, a licensee must have the written consent of the owner. The consent may be obtained in the written listing agreement or other appropriate agreement signed by the owner. Listings may be taken only in the broker’s name and not in a salesperson’s name. All advertising must include information identifying the advertiser as either a broker or salesperson. The salesperson’s name may or may not be included in advertisements, but the broker’s name must always be included. As a matter of practice, the broker’s name should always appear first and in a more conspicuous manner than the salesperson’s name. In this manner, the advertisement will not imply that the salesperson is responsible for operating the brokerage business.

Additionally, Standard of Practice 12-6 of the Code of Ethics requires REALTORS® to disclose any ownership interest they may have when advertising unlisted real property for sale or lease. TREL A also requires a licensee to disclose when the licensee is acting in a dual capacity as both broker and undisclosed principal in a transaction. Before entering into any sales agreement or lease, licensees are also required to disclose that they are licensed real estate brokers or salespersons acting on their own account to any person with whom they are engaging in a transaction to acquire or dispose of their property (22 TAC, Section 535.144).

### **Use of signs**

Brokers must also obtain written consent of the owner before placing a “for sale” or lease sign on the property [Section 15(a)(6)(L) of TREL A]. This consent should be obtained in the listing agreement.

Standard of Practice 12-7 of the Code of Ethics provides that only REALTORS® who participated in a transaction as either the listing broker or cooperating broker may claim to have “sold” the property. Prior to closing, a cooperating broker may post a sold sign only with the consent of the listing broker. NAR’s handbook on multiple listing policy provides that a multiple listing service may not adopt any rule that prohibits the posting of “for sale” signs on the listed property. Any posting of signs after a closing is a matter of agreement between the new owner and the REALTORS® who participated in the transaction.



## **Regulation Z**

Regulation Z, which was issued after Congress passed the Truth in Lending Act, generally covers only advertisements for residential property and does not govern loans primarily for commercial, investment or agriculture purposes. Regulation Z applies regularly to banks, mortgage companies and any other arranger of credit, but brokers who advertise credit terms are subject to Regulation Z as well.

There are three major disclosure requirements in advertising residential mortgage loans. First, if an advertisement sets forth information about loan terms, those terms must actually be available to a qualified borrower. Next, if an advertisement states a rate of finance charge (defined to include interest, points and loan fees), then the advertisement must use the words "annual percentage rate" (APR). The advertisement must state the APR, and, if the finance charge can increase over the terms of the loan, the ad must also disclose that fact.

Lastly, if an advertisement contains any of the following information, then additional disclosures are triggered: the amount or percentage of any down payment, the number of payments or term of the repayment period, the amount of any regular installment payment on the loan or the amount of any finance charges.

If any of these triggers appears in the advertisement, then without exception, all of the following information must be disclosed in the advertisement, including the amount or percentage of the down payment (e.g. \$5,000 down or 10% down): the terms of repayment (\$650 per month for 30 years), the annual percentage rate (the interest rate), and, if the rate may be increased at a later date, then that fact.

The mere mention of the APR alone will not trigger these additional disclosure requirements. If specific information is mentioned in the advertisement, such as \$150,000 assumable note at 7.25% APR, then the disclosure requirements are triggered, and the advertisement must contain all of the above information. The safest practice is for REALTORS® to mention only the APR in the advertisement and suggest that prospects call for further information.

## **Fair housing laws**

Advertising by REALTORS® is also governed by guidelines issued by the U.S. Department of Housing and Urban Development (HUD) pursuant to Section 804(c) of the Federal Fair Housing Act (the Act). Specifically, Section 804(c) prohibits advertisements that state a preference, limitation or discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin. The Act applies to publishers, as well as to the party placing the advertisement. Brokers should be extremely careful about loosely worded ads that may inadvertently imply a limitation or preference with respect to a protected class.

The use of words describing current or potential residents, the neighbors or the neighborhood in racial or ethnic terms will create liability under the Act. HUD has published a list of words and phrases that should never be used including, for example, "white private home," "Hispanic residence," "Oriental neighborhood," or "predominantly Afro-American schools."

Advertisements should not contain any explicit preferences or limitations concerning religion. For example, "good Christian home" is not permissible. However, the advertisement may describe amenities without stating a preference. For example, it is permissible to advertise "apartment complex with chapel" or "kosher meals available." If the legal name of the entity contains a

religious reference, such as “Methodist Village Apartments,” then a disclaimer should be included in the advertisement stating that the owner/lessor does not discriminate.

Advertisements must contain no explicit reference for the gender of the renter. One exception is for shared living spaces. Accordingly, a female advertiser may advertise “female roommate wanted.” Other common phrases permissible in advertising include “bachelor apartment” or “mother-in-law suite.” These phrases are commonly used as physical descriptions of the available premises.

Advertisements must not discriminate or exclude handicapped persons. It would be a violation to advertise “no wheelchairs,” “no mentally ill” or “no alcoholics.” However, again, descriptions of properties, as well as of services and amenities, are permissible. Accordingly, “walk-in closet,” “great view” or “jogging trails” are permissible and do not violate the Act. It is also permissible to describe conduct required of potential tenants. Advertising for only “nonsmoking” or “sober” tenants does not violate the Act.

One of the trickier protected classes is the familial status or families with children. Except for narrow exceptions relating to housing solely for the elderly, advertisements may not contain limitations on the number or ages of children or express a preference for adults, couples or single persons. Again physical descriptions of the property, such as “two-bedroom apartment” or “large family room” are permissible.

HUD regulations also require diversity among the models in advertising photography.

Many times, brokers inadvertently use words or phrases that can be interpreted as expressing a limitation or preference. Regardless of intent, a broker may be liable and subject to substantial damages and fines if an advertisement is found to violate the fair housing laws.

### **Texas Deceptive Trade Practices**

In years past, the Deceptive Trade Practices Act (DTPA) in Texas has been a fruitful source of litigation against brokers. In 1995, the Legislature amended the DTPA as a result of the efforts by TAR to level the playing field.

The DTPA is designed to protect consumers from fraudulent misrepresentation and concealment of material information relating to the offer of goods or services. The courts have interpreted the DTPA in a manner that creates liabilities for innocent misrepresentation or misstatement of fact, as well as for negligent or intentional acts. The Act makes brokers particularly vulnerable to claims if they rely upon information furnished to them by homeowners without independently verifying the accuracy of the information.

Misstating the square footage of a home is one of the most frequent grounds for claims against brokers. There is no uniform or standard method for calculating square footage. Many brokers rely on the county’s central appraisal district; however, that is no guarantee of accuracy. Many homes have additions or converted garages, porches or patios that are not reflected in the appraisal district’s data.

Additionally, an advertisement that describes a home as equipped with a “security system,” for example, when the system is leased may be misleading. Similarly, advertising a home as having a “sprinkler system” when the system is actually manually operated may be misleading.

Simply put, accurately describing the characteristics and qualities of a property will greatly reduce the likelihood of claims against the broker. Brokers should confirm and verify these descriptions whenever possible from the homeowner.

Disclaimers and/or releases to minimize liability may be a good psychological deterrent, but probably are not enforceable under the DTPA.

Brokers and salespeople are subject to a plethora of rules, regulations and statutes regulating their advertising and marketing activities and materials. A serious effort must be made to keep current with the applicable laws since liabilities, penalties and sanctions can be substantial, including possible suspension or revocation of a license.

**Trademark infringement and the Internet: Entering a new domain (Winter 1997)**

*Today's Association Executive by NAR's Legal Affairs Department*

Educating people about what new technology can do for them in their business may require a whole new set of skills for REALTOR. association staff. However, understanding how that technology can be used in the marketplace may also require a new understanding of old rules and principles designed to protect consumers as they may apply to the technology-filled workplace.

An example of applying such a principle to the Internet is demonstrated by decisions such as the one issued on April 26, 1996, by the U.S. District Court in California in *Comp Examiner Agency Inc. v. Juris Inc.* (1996 WL 376600 [C.D.Cal.]), involving the use of another company's trademark as a Web site and second level domain name. Comp Examiner Agency (CEA) was owned by a California attorney who specialized in workers' compensation issues. The attorney had registered the domain name *juris.com* with Network Solutions Inc. (NSI), the Internet name authority in the United States, and then transferred ownership of the domain name registration to CEA for its use.

At the Web site, CEA sold software to use in the legal, insurance and forensic professions. Also, promotions for the Web site claimed that it included links to many useful legal resources found on the Internet. The site was promoted to an audience that included attorneys and law firms.

Juris was a manufacturer of law office software and other goods and services mainly related to law office automation. In 1988 Juris had registered the trademark "Juris" for use in connection with such goods and services with the U.S. Patent and Trademark Office, and the mark had become incontestable under the law governing federal trademark rights (the Lanham Act). The principal market for Juris' products was made up of attorneys and law firms.

When Juris found out about CEA's Web site (while trying to obtain the same domain name from NSI), Juris wrote to CEA asking it to give up the domain name on the basis of Juris' preexisting, valid trademark registration. CEA refused to cooperate; and under NSI's Domain Name Dispute Policy, once Juris had supplied NSI with a copy of its federal registration certificate, which predated CEA's first use of the domain name, CEA should have had one of four options:

1. Within 30 days submit to NSI its own trademark registration certificate for the trademark used in the domain name
2. Relinquish the domain name to Juris
3. Accept assignment of a new domain name
4. Refuse a new name and refuse to assign old name to Juris

Under the third and fourth options, NSI's policy would have required that a hold be put on the name and that it remain unavailable to any party until the dispute could be resolved. CEA failed to provide any response, and according to Juris, NSI, contrary to its own policy, allowed CEA not only to continue to use *juris.com* but also to register *juriscom.com* as new domain name.

CEA sued Juris for declaratory judgment asking the District Court to determine the respective parties' rights to the domain name, and Juris counterclaimed for trademark infringement. Juris then asked the court for a preliminary injunction to stop CEA from continuing to use the *juris.com* domain name while the lawsuit was pending.

In ruling on Juris' motion for a preliminary injunction, the court agreed with Juris' contention that the use of *juris.com* as a domain name was likely to cause confusion among potential purchasers

of CEA's goods and services and lead them to possibly believe that the source of those goods and services was actually Juris. CEA was ordered to shut down all commercial activity at the juris.com site within seven days of the date of the court's order pending a later full trial on the merits.

**The trademark battle continues...**

This wasn't the first time trademark owners had clashed with users of Internet domain names identical to their trademark. Other major companies have had to fight this battle, including McDonalds, Avon, the Better Business Bureau, Hasbro (separately for both their Candyland and Clue trademarks), and Apple Computer (for their Newton trademark), and this is far from a comprehensive list.

This case may have been easier for the court than some other examples because both the trademark owner and the Internet domain name owner were in the same line of business, selling products to the same group of consumers. However, this is one of the first cases to expressly recognize that an Internet domain name could parallel the function of a trademark in commerce and, through the application of traditional principles of trademark law, to determine that using someone else's trademark as a domain name could result in trademark infringement.

The role of trademarks and domain names is an important one, and the case discussed here is only one of many that have arisen involving major corporations. The issue is also of importance in the REALTOR. community as the expansion of real estate business onto the Internet continues to accelerate.

It'll be important for REALTOR. associations to monitor not only members' use of the association's membership marks on the Internet but also their own to assure that all such uses comply with the rules governing the use of membership marks. There are no special rules that must be learned for the Internet, but members as licensees authorized to use the membership marks must abide by the rules on the Internet the same way as in any other media.

The Trademark Protection Program treats the Internet as just another way that members can promote their services and the properties they offer for sale. So the rules governing the use of membership marks on the Internet, including their use as a part of domain names, are the same as those governing all uses of the membership marks by members. Members must observe these rules in the same way they must obey NSI's domain name rules (those rules can be found at [www.internic.net](http://www.internic.net)).

The term REALTOR®, whether used on the Internet, as part of a domain name, or in some other fashion, must refer to a member or a member's company, may not be used with descriptive words or phrases, and should be separated from the member's name or company's name. Uses such as number1realtor.com, firstrealtor.org, or realtorproperties.com are all incorrect. Uses such as johndoe-realtor.com or abcrealty-realtors.com, on the other hand, are examples of what could be done with the term as part of domain names. Membership marks, particularly the REALTOR. block R logo, shouldn't be used as hypertext links at a Web site, as such uses can suggest an endorsement or recommendation of the linked site by your association. \*

The cost involved in correcting these types of misuses emphasizes the importance of communicating the rules and their application in cyberspace to members at the earliest possible

time so that decisions related to domain names and designs for Web sites can include trademark considerations. Because the rules haven't changed, members need only be reminded that the Web isn't an unregulated Wild West where anything goes and that the rules governing the use of membership marks do apply on the Internet.

\* **UPDATE:** In November of 1999, NAR modified its policy regarding the use of the term "REALTOR." in a domain name. The modified policy states, "For use as a domain name or e-mail address on the Internet the term REALTOR does not need to be separated from the member's name or firm name with punctuation. For example, both johndoorealtor.com and johndoorealtor.com would be correct uses of the term as part of domain names and jdoe\*realtors@Webnetservices.com and jdoorealtors@Webnet.com are both correct uses of the term as part of an e-mail address." The policy maintains, however, that "[t]he term REALTOR® may not be used with descriptive words or phrases. For example, Number1realtor.com, numberone-realtor.com, chicagorealtor.org or realtorproperties.com are all incorrect."

**Internet advertising questions and answers (August 1998)**

*Texas REALTOR® by Ron Walker, Director of Legal Affairs, Texas Association of REALTORS®*

With the increased use of the Internet, REALTORS® have been faced with a number of questions related to advertising on the Internet. Advertising rules and regulations apply to any form of advertising, regardless of the media used. The sources of the advertising rules for Texas REALTORS® are:

- (1) the Real Estate License Act;
- (2) the Rules of the Texas Real Estate Commission;
- (3) NAR's Code of Ethics;
- (4) NAR's rules related to the term "REALTOR®";
- (5) Fair Housing Laws;
- (6) Regulation Z under the Truth-in-Lending Law; and
- (7) the Texas Deceptive Trade Practices Act.

Jerry Prager, Counsel for the Greater Dallas Association of REALTORS®, wrote an excellent article that outlines many advertising rules and regulations. Please refer to the 1997 September/October issue of the Texas REALTOR® for a copy. The purpose of this article is to address specific questions that REALTORS® have posed to TAR's Legal Counsel either at seminars or over the telephone. The responses to the questions are general responses and are not intended as approval or disapproval of any specific advertisement.

**Is my Internet Web Site an advertisement?**

Generally, yes. The Internet is a media in which merchants, professionals, vendors, etc. place notices and information designed to call the matter to public attention. Most "commercial" Web Sites are designed to solicit and attract business.

**My Web Site is designed in such a way that persons accessing the Web Site can communicate and transact business with my firm directly from the Web Site. Is my Web Site still considered to be an advertisement?**

Generally, yes. It is the electronic transmission or e-mail that is the communication vehicle through which the business is conducted. The information on the Web Site is an advertisement.

**The Real Estate License Act requires a licensee to identify that person as a real estate broker or salesperson in any advertisement the licensee publishes. Briefly, what license identification information must be included?**

The person causing the advertisement to be published must identify himself as a real estate broker or salesperson in the advertisement. Use of the term "REALTOR®" by REALTOR® members is sufficient to identify oneself as a broker or salesperson.

An example that does not comply with this requirement is:

Available  
Jacob McCandles and Company  
Call Rooster Cogburn  
512-522-2222

Whereas, an example that does comply with this requirement is:

Available  
Jacob McCandles and Company, Real Estate Brokers  
Call Rooster Cogburn, Salesperson  
512-522-2222



**Must the license identification information be on each page of my Web Site?**

Generally, yes.

**If I do not identify any individual associate in an advertisement, but only name the firm must the license identification information be included?**

If the name of the firm (regardless of the type of entity) does not readily identify the firm as a real estate brokerage firm, there must be an additional designation that identifies the firm as a real estate brokerage firm. For example, "Available, Wil Anderson and Company, 512-522-2222," does not comply but, "Available, Wil Anderson and Company, REALTORS®, 512-522-2222," complies.

**If a name of a firm includes phrases such as "realty," "real estate," or "management," is that sufficient to identify the firm as a real estate brokerage firm?**

Generally, those terms are not sufficient.

**Along those same lines, would the following designations in advertisements be sufficient?**

For Sale, Branigan Real Estate Brokerage Firm, 555-5555	Yes
For Sale, Cahill Realty, 523-2323	No
For Sale, Rio Bravo Real Estate, 444-4343	No
For Sale, Rio Lobo Management, 222-2727	No
For Sale, Guns Donavon and Company, 667-6677	No
For Sale, John Elder and Company, REALTORS®, 772-2828	Yes

**If the advertisement identifies the firm as a real estate brokerage firm and names individual associates in the advertisement as well, must I designate each associate as a salesperson or broker?**

It is prudent to identify each and every person named in the advertisement as a salesperson or broker to avoid confusion, but is not required as long as the person or firm causing the advertisement to be published is identified in the advertisement and is as a real estate broker or salesperson.

**May I have a global disclosure at the top or bottom of each page that says all persons and firms named in this advertisement are licensed brokers or salespersons?**

Yes, assuming all individuals named in the advertisement are licensed. Be careful not to include the names of any unlicensed persons in such an advertisement.

**Can I use acronyms to identify a person as a licensee?**

Yes, if the general public commonly knows the meaning of the acronym. For example, "Brkr." or "Agt." are probably sufficient.

**Must the name of my firm be included in an advertisement?**

NAR's Code of Ethics requires the name of the firm to be included in advertisements of listed properties. The Rules of the Real Estate Commission prohibit a salesperson from including only the salesperson's name. It is prudent to include the name of the firm in all advertisements.

**Do the same rules that require the license identification information to be included in an advertisement and require the name of the broker or firm to be an advertisement apply to classified ads as well?**

Yes.



**Do these same rules apply to commercial real estate brokers and salespeople as well?**

Yes.

**As a REALTOR® I am entitled to use the term “REALTOR®” in my advertisements, but I understand that there are certain requirements on how that term may appear, can you elaborate?**

NAR publishes an excellent brochure that summarizes the ways in which REALTORS® may use the term “REALTOR®.” I have taken a few comments from that brochure to respond to your question.

Only members of the REALTOR® Association may use the term “REALTOR®.” REALTOR® members may use the term “REALTOR®” only in connection with their real estate business. One may use the term “REALTOR®” only descriptively. One may not use the term “REALTOR®” as part of one’s name, but may use that term to describe the firm. The term REALTOR® should always appear in capital letters and the federal registration symbol “®” should follow. Punctuation should be used to separate the firm name from the term REALTOR®. Do not hyphenate or abbreviate the term “REALTOR®.” Do not use descriptive words to modify the term “REALTOR®” (for example, “Professional REALTORS®, Commercial REALTORS®, etc.).

**Can I use the term “REALTOR®” in the name of my firm?**

No. A REALTOR® may use the term “REALTOR®” only descriptively. The term “REALTOR®” may not be used a part of firm’s name, but may be used to describe that the firm is a REALTOR® firm. For example, “Alamo REALTORS®, Inc.” is not a proper use of the term, but “Alamo Real Estate, Inc., REALTORS®” is a proper use of the term. In the second example, the term “REALTOR®” is not part of the name and is used descriptively, as evidenced by the comma and the placement of the term “Inc.”

**Can I use the term “REALTOR®” in my domain name?\***

NAR’s Legal Affairs Department answered this question as follows, “The term ‘REALTOR®,’ whether used on the Internet, as part of the domain name, or in any other advertisement, must refer to a member or member’s company, may not be used with descriptive words or phrases, and should be separated from the member’s name or company’s name. Uses such as number1realtor.com, firstrealtor.org, or realtorproperties.com are all incorrect. Uses such as johndoe-realtor.com or abcrealty-realtors.com, on the other hand, are examples of what could be done with the term as part of a domain name.”

**Do any of the regulations impose any requirements on the amount of time that I must remove a listing from a Web Site once it has sold?**

The Real Estate License Act and NAR’s Code of Ethics prohibit any misleading or false advertisements. If a real estate licensee advertises listings on the Internet and fails to remove the listings within a reasonable period of time after the listing sells, the licensee could be accused of misrepresenting the status of available property in his or her advertisement. A real estate licensee might be accused of misleading the public to believe that the licensee has an inflated number of listings. Therefore, removal of advertisements from the Internet that concern listed properties should be promptly removed after the listing sells.

**Can you briefly outline the requirements that I must comply with if I put any loan information such as the monthly payment or interest rate, in an advertisement?**

Jerry Prager details these requirements in his article. I have summarized Jerry's response here. If the advertisement contains loan information, those terms must be available to a qualified borrower. If a rate of finance charge is set out (interest, points, loan fees), then the words "annual percentage rate (APR)" must be used. The advertisement must state the APR and if the finance charge can increase over the term of the loan. If the advertisement contains information about the down payment, term, payment amount, or finance charge, then all of the following information must be disclosed: down payment, term, APR, and if the rate may be increased. Mentioning only the APR will not trigger the additional disclosures. If specific information other than the APR is mentioned, such as the loan amount, down payment, etc., then the disclosures are triggered.

**Is there any checklist that I can use to determine if my Internet advertisements generally comply with the different rules and regulations?**

While this checklist may not be comprehensive, it sets out many compliance issues.

- (1) Does the advertisement contain any misleading statements or does it tend to create a misleading impression in any manner? It is prudent for someone who did not design the advertisement to scrutinize the advertisement for any potentially misleading statements. Keep in mind that the standard is not whether a statement is true or not, but whether the advertisement "tends to create a misleading impression."
- (2) Does the advertisement contain the name of the real estate firm or broker?
- (3) Does the advertisement identify the professional or license status of persons in the advertisements? It might be prudent to identify the license status of all individuals and firms named in the advertisements either specifically or globally. Use of the term "REALTOR®" may be used to identify this status.
- (4) Is a real estate salesperson's name the only name that appears in the advertisement? If so, be sure to include the name of the salesperson's broker.
- (5) Does the person causing the advertisement to be published have proper authority to publish or submit the advertisement?
- (6) Is the price quoted the price agreed upon by the owner?
- (7) If any service is offered as "free of charge," make sure that the service is not tied to or contingent upon any service for which the REALTOR® is to be compensated.
- (8) If any inducements are offered, does the advertisement fully describe the conditions for inducements?
- (9) Is any ownership interest in the property held by the REALTOR® disclosed?
- (10) If any loan information is advertised, does the advertisement comply with requirements of Regulation Z?
- (11) Does the ad inadvertently imply a limitation or preference to a protected class that could potentially violate fair housing laws?
- (12) Is the specific information related in the advertisement accurate?

\* **UPDATE:** In November of 1999, NAR modified its policy regarding the use of the term "REALTOR." in a domain name. The modified policy states, "For use as a domain name or e-mail address on the Internet the term REALTOR does not need to be separated from the member's name or firm name with punctuation. For example, both johndoe-realtor.com and johndoerealtor.com would be correct uses of the term as part of domain names and jdoe\*realtors@Webnetservices.com and jdoerealtors@Webnetservices.com are both correct uses of the term as part of an e-mail address."

**Copyright Law of the United States of America  
Title 17 of the United States Code**

**§ 107. Limitations on exclusive rights: Fair use**

Notwithstanding the provisions of sections 106 and 106A, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include-

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole;  
and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

The fact that a work is unpublished shall not itself bar a finding of fair use if such finding is made upon consideration of all the above factors.