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## Advertising by REALTORS®

Member Legal Services  
Tel 213.739.8282  
Fax 213.480.7724  
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### Table of Contents

I.	<b>Advertising of Real Estate Services</b>
II.	<b>Advertising Real Estate</b>
III.	<b>Using MLS Data in Advertising</b>
IV.	<b>Advance Fee Advertising</b>
V.	<b>Subdivision Advertising</b>
VI.	<b>Mobilehome Advertising</b>
VII.	<b>Mortgage Loan Brokerage Advertising</b>
VIII.	<b>Advertising of Financing</b>
IX.	<b>Advertising Over the Internet</b>

### Introduction

In the normal course of doing business, real estate licensees often find themselves advertising both their services and the property they are selling. To avoid liability, REALTORS® need to be aware of both the legal and ethical restrictions on advertising. Real estate advertising is regulated by the **California Real Estate Law\***, the Federal Truth-in-Lending Act (15 U.S.C. § 1601 *et seq.*) and Regulation Z (12 C.F.R. Part 226), the **Department of Real Estate's (DRE) Regulations \*** (10 Cal. Code Regs. §§ 2700 *et seq.*), the **NATIONAL ASSOCIATION OF REALTORS® (NAR) Code of Ethics\*** as well as the **Multiple Listing Service Rules**. This memorandum covers advertising real estate services in any medium including, but not limited to, newspapers, flyers, business cards, e-mails, faxes, radio and television.

See also the legal memorandum, **Advertising by Telephone, Fax, and E-mail**, available on *CAR Online* for a detailed discussion of telemarketing by

telephone, fax, and e-mail. In addition, see the NAR article, **Use of the REALTOR® Marks on the Internet**, for a discussion of the use of the REALTOR® trademark in internet advertising.

## I. Advertising of Real Estate Services

This section will separately address the legal and ethical limitations on advertising real estate services.

**Q 1. *Is a real estate broker or firm required to disclose licensed status in all advertising?***

### Legal and Ethics Requirement:

**A** Yes. Anytime a broker advertises services *for which a real estate license is required*, the broker is required to indicate, by use of terms such as broker, agent, real estate licensee or REALTOR®, or abbreviations such as bro. or agt., that the advertising is being done by a real estate licensee. This requirement applies to all real estate salespersons not only brokers. ( Cal. Bus. & Prof. Code § 10140.6, 10 CCR § 2770.1, NAR Code of Ethics Article 12.)

The law provides an exception for classified rental advertisements. If the ad includes the telephone number at the premises of the property offered for rent or the address of the property offered for rent, then the licensed status of the real estate licensee is not required. (Cal. Bus. & Prof. Code § 10140.6.) However, the NAR Code of Ethics does not provide this exception!

**Q 2. *Is a real estate broker or real estate firm required to use its name in all advertising?***

**A**

### Legal Requirement:

No. The law does not require that the actual name of the real estate firm or broker be used. ( Cal. Bus. & Prof. Code § 10140.6.)

### Ethics Requirement:

Yes, but only for listed property. In other words, if the advertising of services for which a real estate license is required is done by a REALTOR®, as opposed to a non-REALTOR® licensee, and if the property being advertised is listed with the firm, the actual firm name must be specified. Thus, in these circumstances, the Real Estate Law simply requires identification as a licensee, but the NAR Code of Ethics also requires disclosure of the name of the office. (NAR Code of Ethics Standard of Practice 12-5.)

**Q 3. *If the name of the real estate firm is mentioned in the ad, must the designation as agent, broker, etc. also be specified?***

**Legal and Ethics Requirement:**

**A** If the firm's name does not make it clear that it is a real estate company, then the firm must be identified with one of the authorized designations. For example, if the name of the firm is "The John Smith Real Estate Brokerage Company," the name alone would be sufficient to identify the company as a licensee. On the other hand, if the name of the firm is "The John Smith Company," the name alone would not clearly identify the advertiser's designation as a real estate firm, and a term such as agent, broker, REALTOR®, etc. would also have to be used in the ad. ( Cal. Bus. & Prof. Code § 10140.6, NAR Code of Ethics Article 12.)

**Q 4. *May a salesperson use his/her name and/or telephone number in an advertisement without using the broker's name?***

**A**

**Legal Requirement:**

Yes. See Question 2. The broker's name need not be in the ad regardless of whether the salesperson includes his/her name or not. ( Cal. Bus. & Prof. Code § 10140.6.)

**Ethics Requirement:**

No, for listed property. According to the NAR Code of Ethics, the "name of the firm" must be present in any advertising of property listed with the firm; therefore it follows that all salespersons advertising property listed by REALTORS®, must contain the office name.

**Q 5. *Must a licensee identify him/herself as a broker, agent, etc. when advertising his/her own property for sale if it is not listed with the firm?***

**A**

**Legal Requirement:**

No. The legal rules on advertising only address advertising services for which a license is required. Since selling one's own property does not require a license, the Department of Real Estate does not require licensees to identify themselves as such when doing so. (Cal. Bus. & Prof. Code § 10131.)

**Ethics Requirement:**

Yes. In other words, unlike the law, the NAR Code of Ethics requires REALTORS® selling their own property to disclose their status both as an owner and a REALTOR® or real estate licensee when advertising the property, whether or not the property is listed with the firm. (NAR Code of Ethics Standard of Practice 12-6.)

**Note:** A REALTOR® may not use the name of the real estate firm in the advertisement, however, if the property being sold is not listed with the firm. To do so would be misleading advertising.

**Q 6. *May a real estate licensee use a nickname in advertising?***

**A** It depends. There is no law specifically addressing the issue of the use of nicknames. The DRE handles this issue on a case-by-case basis. Can a REALTOR® named "Giancarlo de Montezumalo" call himself "Johnny Montez" on his business card or flyers? Or, can "William Jones" call himself "Bill Jones"?

The conservative answer is to not use nicknames to ensure that the public always know with whom they are dealing. It is probably acceptable to use the nickname in the ad *in addition* to the licensed name such as: Giancarlo de Montezumalo ("Johnny Montez") or Thomas "Buck" Rogers (where Thomas Rogers is the DRE registered name and Buck is the nickname).

Brokers may obtain a fictitious business license for a nickname; however, a salesperson cannot do so (10 Cal. Code Regs. § 2731).

**Q 7. *When submitting classified rental advertisements, must the licensee identify him/herself as a licensee?***

**A**

**Legal Requirement:**

No. In other words, it is sufficient simply to list an address or phone number. ( Cal. Bus. & Prof. Code § 10140.6.)

**Ethics Requirement:**

Yes. Once again the NAR Code of Ethics requires more than the law. To be specific, the NAR Code of Ethics requires REALTORS® to identify themselves as REALTORS® or real estate licensees in all advertising, including classified rental advertisements. (NAR Code of Ethics Article 12.)

**Q 8. *Are there any other specific advertising guidelines that REALTORS® should be aware of?***

## A

### Legal Requirement:

Yes.

- A real estate licensee may not run any kind of advertisement concerning the sale, rental or financing of real property that indicates any preference, limitation or discrimination because of race, color, sex, religion, ancestry, physical handicap, marital status or national origin. (10 Cal. Code Regs. § 2780.)
- A real estate licensee may not advertise an illegal real estate lottery. See legal memorandum, **Real Estate Lotteries**. ( Cal. Penal Code § 322.)

### Ethics Requirement:

Yes.

- NAR Code of Ethics Standard of Practice 10-1 states, “REALTORS® shall not print, display or circulate any statement or advertisement with respect to the selling or renting of a property that indicates any preference, limitations or discrimination based on race, color, religion, sex, handicap, familial status, or national origin.”
- NAR Code of Ethics Standard of Practice 12-1 states, “REALTORS® may use the term “free” and similar terms in their advertising. . . provided that all terms governing availability of the offered product or service are clearly disclosed at the same time.”
- NAR Code of Ethics Standard of Practice 12-2 states, “REALTORS® may represent their services as “free” or without cost even if they expect to receive compensation from a source other than their client provided that the potential for the REALTOR® to obtain a benefit from a third party is clearly disclosed at the same time.”
- NAR Code of Ethics Standard of Practice 12-3 states, “The offering of premiums, prizes, merchandise discounts or other inducements . . . is not, in itself, unethical” even if the benefit is contingent on doing business with the REALTOR®; however, REALTORS® must “exercise care and candor in any such advertising . . .”

**Q 9. Are there any ethical rules limiting the right of a REALTORS® to advertise that he or she "sold" a particular property?**

### Ethics Requirement

**A** Yes. NAR Code of Ethics Standard of Practice 12-7 provides that only REALTORS who participated in the transaction—that is, the listing broker or selling broker--may advertise that they "sold" the property. Prior to closing, a cooperating (selling) broker may post a “sold” sign *only* with the consent of the listing broker. The Model MLS Rules also contain the same restrictions. (Model MLS Rule 12.7.)

**Q 10. To what types of advertising do these legal and ethical rules discussed above apply?**

**A**

**Legal and Ethics Requirement:**

These rules apply to every and any type of advertising that real estate licensees decide to use, including, but not limited to, flyers, postcards, newspapers, magazines, "For Sale" signs, billboards, business cards, e-mails, faxes, radio, television.

For the rules on internet advertising, please refer to the following legal memoranda:

- **The Basics About Internet Data Exchange ("IDX"),**
- **"Framing" on the Internet,**
- **The Internet and Issues Related to the Real Estate Industry,**
- **Online Privacy Laws Affecting REALTORS®**

**Q 11. Are there any special rules governing the use of the REALTOR® logo and the term REALTOR® in advertising?**

**A**

**Legal Requirement:**

Yes. The DRE may suspend or revoke the license of a real estate licensee who willfully uses the term REALTOR® when he/she is not a member of NAR. [Please note that membership with a local board or association includes membership with C.A.R. and NAR.] ( Cal. Bus. & Prof. Code § 10177(e).)

**Ethics Requirement:**

Yes.

- The term REALTOR® can be used only by members of the NATIONAL ASSOCIATION OF REALTORS® (NAR). The term is not a synonym for a member of the real estate profession.
- Upper case letters and the federal registration symbol ® should always be used when using the term REALTOR®, REALTORS®, or REALTOR-ASSOCIATE®. The rule is different when advertising over the internet. See the NAR article, **Use of the REALTOR® Marks on the Internet.**
- The term REALTORS® should be separated from the licensee's name or firm name by punctuation; for example, it would be correct to say "Smith & Co., REALTORS®," but not correct to say "Smith REALTORS®."
- Licensees should never use adjectives, geographic descriptions or other descriptive words to modify the REALTOR® mark. For example, it would

be improper to say "your REALTOR®" or "professional REALTOR®," or "California REALTOR®."

- The REALTOR® logo should never be used as part of a firm's business name or as the first letter of a word.
- The logo should never be combined with other symbols or altered in any other fashion. It must always be distinct and separate.
- Finally, the REALTOR® logo should never be reduced to the point where the registration symbol ® is not legible.

For additional information about the REALTOR® trademark, see the [NAR Trademark Manual](#) (NAR password required). See also the NAR article, [Use of the REALTOR® Marks on the Internet](#).

## II. Advertising Real Estate

Real estate licensees have both a legal and ethical obligation to be truthful when advertising property or services. Legally, licensees may be held liable for fraud, intentional misrepresentation, or negligent misrepresentation if they make material false statements or material omissions in any medium of advertising. Cal. Bus. & Prof. Code § 17500. In addition, licensees may face discipline from the DRE. Cal. Bus. & Prof. Code § 10177(c). Furthermore, licensees who place listings in a Multiple Listing Service in expectation of compensation are responsible for the truth of all representations in such listings which the licensees had knowledge or reasonably should have had knowledge of to anyone injured by their falseness or inaccuracy.

Similarly, REALTORS® have an ethical duty under the NAR Code of Ethics to avoid false advertising. For example, Article 12 states, "REALTOR® shall be careful at all times to present a true picture in their advertising and representations to the public. . . ." Additionally, most Multiple Listing Service (MLS) rules incorporate the provisions of Article 12, so MLS-only participants are also bound by its provisions.

**Q 12. *What penalties does a real estate licensee face if he/she engages in false or misleading advertising?***

**A** According to California Business and Professions Code Sections 17500 and 17536, a violator is subject to imprisonment in the county jail for up to six months and penalties as high as \$2,500 per violation, or both. A licensee may also face suspension or revocation of his/her license. ( Cal. Bus. & Prof. Code § 10177(c).)

**Q 13. *Are there any guidelines or descriptions of what is prohibited false or misleading advertising?***

**A** It is possible to violate California Business and Professions Code Section

17500 without any specific intent to deceive ( *People v. Wahl* (1940).) A real estate corporation was held liable for false newspaper advertisements despite the fact that no employee connected with the ad campaign had actual knowledge of the misrepresentations. Three employees cumulatively had information proving the ads were misleading; this knowledge was imputed to the corporation itself. ( *People v. Forest E. Olson, Inc.* (1982).)

In order to recover damages under Section 17500, it is necessary only to show that members of the public are *likely* to be deceived. Actual deception or confusion is not required. A court could order relief without individualized proof of deception, reliance, or injury. ( *People v. Dollar Rent-A-Car Systems, Inc.* (1989).)

In an action by the district attorney against a real estate firm seeking damages and injunctive relief for false and deceptive newspaper advertisements under Section 17500, the court interpreted "one violation" under the statute to mean not just *one publication* of the false or misleading statement, but there were as many "violations" as there were persons who read the advertisement or who responded to the advertisement! ( *People v. Superior Court (Olson)* (1979).)

Here are a few general guidelines:

- Avoid any advertising in which the advertisement can be interpreted a number of different ways. In other words, if a licensee is not willing to stand behind or live with all possible interpretations, he/she should not use the ad.
- Avoid "half truths" or inflated claims. Courts have consistently held that half truths are equivalent to lies, and licensees should be prepared to defend in court any claim made in their advertising.
- Licensees should set forth clearly any limitations intended to be imposed on offers made in their advertising. For example, if a licensee advertises a \$500 rebate to the seller for listing with the licensee, but intends to pay the full \$500 only if the licensee also represents the buyer in the transaction, this limitation must be specified in the advertisement.

**Q 14. Has the DRE provided any specific examples, such as case studies, of false or misleading advertising?**

**A** Yes. For example, in one edition of the DRE Bulletin, the Department described a case where a brokerage company advertised that it sold \$500,000 worth of property, when in fact the value of the property had only been \$250,000. The reason the firm had arrived at the figure of \$500,000 was that it had employed both the listing and selling agents in the transaction and claimed that it was standard practice to count both the listing and selling ends of the transaction. The Department held this to be a false and misleading advertisement because, while it may be common practice for both the listing and selling agents to count the sale toward their volume, that would be true only if those agents were from separate companies.

**Q 15. Are there any limitations on advertising offers of prizes or gifts, when the advertiser intends to offer a sales presentation as well?**

**A** The only requirement is that the intent to offer such sales presentation be clearly and unequivocally made along with the mention of the prize or gift (NAR Code of Ethics Standard of Practice 12-3).

**Q 16. May a real estate licensee who is soliciting potential buyers advertise a property that he/she does not have listed?**

**A** Not without permission. A REALTOR® may not advertise property without authority. NAR Code of Ethics Standard of Practice 12-4. That means, a REALTOR® may not advertise a property that he/she does not have listed unless the owner gives his/her permission. It is highly recommended that this permission be in writing.

Furthermore, Section 12.8 of the California Model MLS Rules states that a listing cannot be advertised by any participant or subscriber, other than the listing broker, *without the prior consent of the listing broker* (except as provided in Section 12.16 relating to display of listings on the internet). Again, it is highly recommended that this permission be in writing. The **California Model MLS Rules** are available on *CAR Online*.

### III. Using MLS Data in Advertising

**Q 17. May a real estate licensee use MLS information in advertising?**

**A** Yes, for MLS participants or subscribers. According to Section 12.9 of the California Model MLS Rules, “Except as provided in Sections 12.7, 12.8, 12.11 and 12.15, truthful use of information from the MLS compilation of current listing information, from the A.O.R.’s ‘statistical report,’ or from any ‘sold’ or ‘comparable’ report of the A.O.R. or MLS for public mass media advertising by an MLS participant or subscriber or in other public representations for purposes of demonstrating market share is not prohibited. However, any print or non-print forms of advertising or other forms of public representations must clearly demonstrate the period of time over which such claims are based and must include the following, or substantially similar, notice:

Based on information from the \_\_\_\_\_ /Association of REALTORS® (alternatively, from the \_\_\_\_\_ MLS) for the period (date) through (date).”

The Model **Multiple Listing Service Rules** are available on *CAR Online*.

### IV. Advance Fee Advertising

**Q 18. *What is an advance fee?***

**A** An *advance fee* is simply compensation that a real estate licensee obtains for services *before* they are performed. In view of the potential for abuse in this area, the DRE regulates advance fees very stringently. An "advance fee" does not include a rental *security deposit*, as that term is used in Section 1950.5 of the Civil Code, or a rental *screening fee*, as that term is used in Section 1950.6 of the Civil Code. ( Cal. Bus. & Prof. Code § 10026.)

**Q 19. *Does the Real Estate Commissioner have the right to pre-approve advance fee advertising material?***

**A** Yes. Any person who proposes to collect an advance fee must submit all materials to be used in advertising, promoting, soliciting, or negotiating an agreement calling for the payment of an advance fee, including the advance fee agreement itself, not less than ten days before the publication or other use of the material. This rule applies to letters, cards, radio and television advertising, and all contract forms. ( Cal. Bus. & Prof. Code § 10085.)

**Q 20. *Does the Real Estate Commissioner have the right to order material not to be used?***

**A** Yes. (Cal. Bus. & Prof. Code § 10085.)

**Q 21. *What happens if a licensee violates the Commissioner's order or the advance fee rules?***

**A** Any person using, disseminating, or publishing any matter which the commissioner has ordered not to be used, published, or disseminated will be guilty of a misdemeanor punishable by a fine not exceeding \$ 1,000 or by imprisonment in the county jail not exceeding six months, or both, for each such use, dissemination, or publication. In addition, a violation of the advance fee rules will subject the real estate licensee disciplinary actions by the DRE. ( Cal. Bus. & Prof. Code § 10085.)

The DRE may also obtain a cease and desist order ( Cal. Bus. & Prof. Code § 10086).

A mortgage loan broker who violates the advance fee rules can be found guilty of a public offense punishable by a fine not exceeding \$ 10,000, by imprisonment in the county jail for a term not to exceed six months, or by both that fine and imprisonment, or if by a corporation, the violation is punishable by a fine not exceeding \$ 50,000 ( Cal. Bus. & Prof. Code § 10085.5).

**Q 22. *What sort of material may the Commissioner disapprove of?***

**A** The Commissioner won't approve advance fee advertising material if it:

- 1) includes false, misleading or deceptive representations;
- 2) does not set forth a specific, complete description of the services to be rendered;
- 3) does not set forth the total amount of the advance fee along with the date on which it should be due and payable;
- 4) contains any provision which purports to relieve the person collecting the fee from an obligation to fulfill commitments made by employees of the person contracting for the advance fee;
- 5) contains any provision which gives a guarantee that the property or business opportunity in question will be purchased, leased or exchanged or that a loan secured by real property will be obtained as a result of the services rendered by the person collecting the advance fee; or
- 6) does not set forth a definite date for full performance of the services promised under the advance fee agreement.

(10 Cal. Code Regs. § 2970.)

**Q 23. *How long does the Commissioner have to order material not to be used?***

**A** The commissioner has 10 days from the date the DRE receives the material ( Cal. Bus. & Prof. Code § 10085).

<b>V.</b>	<b>Subdivision Advertising</b>
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**Q 24. *Are there any specific rules in the California Real Estate law concerning subdivision advertising?***

**A** Yes. In addition to the general prohibition on false and misleading advertisements, California law specifically prohibits false or misleading advertising of subdivisions. Several sections of the California Business and Professions Code regulate false and misleading advertising as it pertains to subdivisions. Advertising includes the publication, distribution or circulation of any written message, radio broadcast or telecast , “or in any other manner or means whatever, including over the Internet” in any language. ( Cal. Bus. & Prof. Code §§ 17500, 17530, 10140.)

**Q 25. *What is the penalty for violating this provision of the law?***

**A** The penalty for false or misleading subdivision advertising includes possible loss of license, monetary fines, and imprisonment in the state prison for up to one year.

(Cal. Bus. & Prof. Code § 17500 (\$2,500 fine and county jail for up to 6 months); Cal. Bus. & Prof Code § 10140 (\$1,000 fine, county jail up to 1 year and suspension or revocation of license); Cal. Bus. & Prof Code § 17536(a) (\$2,500 fine for each violation); Cal. Bus. & Prof Code § 10137(c) (suspension or revocation of license).)

**Q 26. Are publishers or employees of newspapers, magazines, broadcasters or telecasters, liable for publishing advertising that violates this provision?**

**A** No, unless they have actual knowledge of the false or misleading nature of the advertisement. If any of these individuals have an interest either as an owner or agent in the subdivided land so advertised, however, they are not exempted from liability even if they don't have actual knowledge that it is false or misleading. ( Cal. Bus. & Prof Code § 17530.)

**Q 27. Are there any restrictions on subdivision advertising that offers gifts or prizes?**

**A** Yes. It is unlawful to advertise a prize or gift to entice persons to come visit a subdivision development with the intent to offer a sales presentation without disclosing at the time of the offer that there will be a sales presentation ( Cal. Bus. & Prof Code § 17533.8).

**Q 28. Are there any standards for determining what is considered "false or misleading" by the DRE as far as subdivision advertising is concerned?**

**A** Yes. DRE Regulation 2799.1 lists 37 criteria used by the Real Estate Commissioner. The Commissioner is not limited to these, however. Some of the more important rules are as follows:

- Subdivision advertisements should not imply or refer to future facilities or improvements unless they are completed or installed, unless completion is assured through bonding or other arrangements approved by the Commissioner.
- Pictorial representations of the subdivision or of the surrounding land must accurately portray the land as it exists and proposed improvements as they will be constructed.
- Language in the public report shall not be quoted out of context, nor shall any part of the public report itself be highlighted except in conformance

with highlighting on the public report itself.

- Any sketches other than unmodified photographs must be labeled as "ARTIST CONCEPTION" and must identify those improvements which are not then in existence.
- Advertisements must not state availability of financing for on-site construction unless a recognized lender has given a bona fide written expression of an intention to finance such construction.
- No advertisement shall imply that a facility is available for the exclusive use of purchasers of subdivision interests if a public right of access or of use of the facility exists.
- The approximate retail value of any gift, prize or premium offered through an advertisement to prospective purchasers shall be set forth in the advertisement.
- Advertising shall not include testimonials which contain matters which the subdivider would be precluded by law or regulation from making on his/her own behalf.
- Offers of travel, accommodations, meals or entertainment at no or reduced costs, the purpose of which is to promote sales, shall not be described as awards, prizes or words of similar import.

**Q 29. Are there any special restrictions when advertising the sale or lease of out-of-state subdivisions?**

**A** Yes. The advertising must include the following disclaimer in at least 10-point type:

WARNING: THE CALIFORNIA DEPARTMENT OF REAL ESTATE HAS NOT INSPECTED, EXAMINED, OR QUALIFIED THIS OFFERING.

In addition, if a California resident is presented with a contract to lease or purchase property in this subdivision, there needs to be another disclaimer. The required language is provided in California Business and Professions Code Section 10249.8 (c).

**The Real Estate Law and the DRE Regulations** are available on the DRE website.

**Q 30. Are there any special restrictions when advertising the sale or lease of subdivisions outside of the United States?**

**A** Yes. The advertising must contain a disclaimer that can be found in Business & Professions Code Section 10249.9(a).

**The Real Estate Law and the DRE Regulations** are available on the DRE website.

<b>VI. Mobilehome Advertising</b>
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**Q 31. Are there special rules governing the advertising of mobilehomes for sale by real estate licensees?**

**A** Yes. Real Estate licensees may only advertise or offer for sale:

- Mobilehomes that are in place on a lot rented or leased for human habitation within an established mobilehome park; or
- Mobilehomes that are located on a lot, pursuant to a local zoning ordinance or permit, where their presence has been authorized or their continued presence and that use would be authorized for a total period of at least one year. In other words, the mobilehome doesn't have to have been there for a year, but it must be authorized to be there for that length of time.

(Cal. Bus. & Prof. Code § 10131.7.)

**Q 32. May real estate licensees advertise new mobilehomes for sale?**

**A** No. Real estate licensees may not sell mobilehomes that are not registered with the Department of Housing and Community Development (HCD), and, consequently, may not advertise new mobilehomes ( Cal. Bus. & Prof. Code §§ 10131.6, 10131.7).

**Q 33. Are there any other specific rules concerning mobilehome advertising?**

**A** Yes.

- Real estate licensees must withdraw all mobilehome advertisements 48 hours after receiving notice that the mobilehome is no longer available;
- No representation can be made that a mobilehome is capable of being transported on California highways if the mobilehome does not comply with all of the applicable equipment requirements in the Vehicle Code; and
- licensees may not include mobilehome licensee fees in the advertised selling cost of a mobilehome, except where the buyer and seller agree to the proration of the license fees for the applicable license period, or transfer of title of the mobilehome as a vehicle, which amount is not due to the state unless, prior to the sale, the amount has been paid by the licensee to the state in order to avoid penalties that would have accrued because of late payment of the fees.

(Cal. Bus. & Prof. Code § 10131.7.)

**Q 34. Under what conditions can a real estate licensee advertise that no down payment is required in connection with the sale of a mobilehome?**

**A** A licensee may advertise that no downpayment is required only if, in fact, there is no downpayment. In other words, if the buyer is advised or induced to finance what is, in effect, a downpayment by a loan in addition to any other loan financing the remainder of the purchase price of the mobilehome, then the licensee may not advertise that there is no downpayment. ( Cal. Bus. & Prof. Code § 10131.7.)

## VII. Mortgage Loan Brokerage Advertising

**Q 35. Are there additional special advertising rules for mortgage loan brokers?**

**A** Yes.

- Any real estate licensee, who advertises loans unsecured or secured by a trust deed, must disclose within the printed text of that advertisement, or in the oral text in the case of a radio or television advertisement, the license under which the loan would be made or arranged. ( Cal. Bus. & Prof. Code §§ 10235.5 (any loan), 17539.4 (“loan which utilizes real property as collateral”).)
  - For example: "Real estate broker, California Department of Real Estate" or "California Department of Real Estate, Real Estate Broker" (You may use abbreviations "CA" "CAL" "CALIF" and "DEPT.")
- In addition, every licensed real estate broker must display his or her 8 digit DRE license number on all advertisements soliciting borrowers or potential investors. Cal. Bus. & Prof. Code § 10236.4(a).

**Note:** In the borrower and lender/purchaser disclosure statements (MLDS & LPDS), a broker must disclose the license number and the DRE information telephone number that a consumer may call to inquire about the licensed status of the broker.

**Q 36. What types of loan advertisements are generally considered false or misleading?**

**A** The Business and Professions Code provides that no licensee may advertise, print, display, telecast or broadcast in any manner any statement with regard to the rates, terms or conditions for making, purchasing or

negotiating loans or real property sales contracts which are false, misleading or deceptive. Furthermore, indicating or implying any specific yield or return on any note other than the interest specified in the note is considered prima facie evidence that such advertisement is misleading or deceptive unless the advertisement sets forth the actual interest specified in the note and the discount from the outstanding principal balance by which it is being offered for sale. ( Cal. Bus. & Prof. Code § 10235.)

In addition, DRE Regulation 2848 (10 Cal. Code Regs. § 2848) lists 16 examples of what the Department considers to be false or misleading advertisements in this area. For example, (1) considers false or misleading "the use of 'guaranteed,' 'insured,' 'bonded,' 'sure,' 'safe,' 'sound' or other words or phrases of similar import to describe or characterize the security of lenders' or purchasers' funds, or the return to lenders or purchasers from the use of their funds, without an accompanying statement of fact supporting the use of the words or phrases implying high security. A representation to the effect that no losses or minimal losses have been sustained by lenders or purchasers doing business with the licensee shall include the period of time to which the representation applies."

**The Real Estate Law and the DRE Regulations** are available on the DRE website.

**Here are some additional common advertising violations by mortgage loan brokers:**

- Using comparative or superlative terms without including additional information to make the term used unambiguous.
  - For example: Using the expression "FAST LOANS" without explaining how fast is "fast."
  - For example: Using the expression "LOW RATES" without including the specific rates that are available so that the term "low" is actually defined.
- Advertising an interest rate without disclosing whether the rate is for a first mortgage or junior loans or both.
- Advertising an interest rate without disclosing the APR. Stating "APR Not Calculated" is not sufficient.
- Advertising loans as "No Cost" loans or "No Fee" loans are by themselves misleading. All real property secured loans have certain inherent costs (e.g., title insurance, escrow, appraisal, recording fees, etc.). Typically, the borrower pays for these services through a higher interest rate if not out-of-pocket.

**Q 37. *May a mortgage loan broker submit his/her proposed advertisements to the Commissioner for review?***

**A** Yes. A real estate broker, prior to using any proposed advertisement in connection with loans, promissory notes or real estate sales contracts, may

submit a copy to the DRE for approval (with a fee of \$40). If the DRE doesn't respond within 15 calendar days after receipt of the advertisement, the proposed advertisement is deemed approved. However, the DRE may disapprove a later publication or use of the same or similar advertisement. (Cal. Bus. & Prof. Code § 10232.1, 10 Cal. Code Regs. § 2847.)

**Important Note:** The DRE checks only for compliance with state law. That means the advertisement may be approved despite the fact that it is not in compliance with federal law!! Be sure to read the section below on "Advertising Financing" and Regulation Z requirements.

**Q 38. *May a mortgage loan broker offer inducements like premiums or gifts to a prospective note purchaser or lender?***

**A** No. A real estate licensee may not advertise to give to a prospective promissory note purchaser or lender any premium, gift or any other object of value as an inducement for making a loan, or purchasing a promissory note secured directly or collaterally by a lien on real property or a real property sales contract ( Cal. Bus. & Prof. Code § 10236.1).

## VIII. Advertising of Financing

**Q 39. *What federal laws regulate advertising of financing?***

**A** In addition to the California advertising requirements discussed above, the advertising of real estate financing is also regulated by the **Truth-in-Lending Act** ("TILA," 15 U.S.C. § 1601 *et seq.*) , which is a federal law enforced by the Federal Trade Commission. Implementing regulations for the Truth-in-Lending Act can be found in Regulation Z ("Reg Z," 12 C.F.R. Part 226).

**Q 40. *How does TILA and Reg Z regulate financing in real estate transactions?***

**A** TILA and Reg Z regulate disclosures of the terms and costs of credit (Reg Z § 226.1(b)). The traditional mortgage loan transactions involving real estate are considered "closed-end transactions" in TILA. TILA also deals with other types of transactions such as credit card financing.

**Q 41. *What transactions are covered by TILA and Reg Z?***

**A** According to Reg Z, transactions are covered if all of the following occur:

- Credit is offered or extended to consumers;
- Credit is offered or extended regularly;

- A finance charge is made on the credit or it is to be repaid in more than 4 installments;
- Credit is primarily for personal, family, or household purposes.

(Reg Z § 226.1(c)(1).)

**Q 42. Are advertisements subject to TILA and Regulation Z?**

**A** Yes. If a loan is subject to TILA and Reg Z, then the loan advertisement is subject to TILA and Reg Z (TILA, 15 U.S.C. § 1664).

**Q 43. Are there any specific restrictions on advertising finance charges or rates?**

**A** Yes. According to Reg Z, if an advertisement includes a rate or finance charge it must:

- state the rate as an "annual percentage rate" or APR, using the words or the abbreviation;
- declare that the rate may be increased after the transaction is closed, if that is true;
- not state any other rate other than a simple annual rate or a periodic rate that is applied to an unpaid balance; and
- when stating any simple rate or periodic rate, mention it in conjunction with and not in replacement of the APR. Furthermore, the simple annual rate must not be more conspicuous than the APR in the advertisement.

(Reg Z § 226.24(b).)

**Q 44. Are there any specific rules concerning the format of the advertisement, such as the relative font size for the various figures?**

**A** No. Reg Z simply requires that the advertisements be "clear and conspicuous." (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 45. Must the advertisement include an explanation of what is meant by "annual percentage rate" or "APR"?**

**A** No. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 46. If the consumer's payments on a transaction are based on an interest rate lower than the rate at which interest is actually accruing, may this lower rate be referred to in the advertisement?**

**A** Yes, these rates may be advertised, as long as they are referred to as the effective rate, payment rate or qualifying rate. In addition, the advertisement must contain:

- 1) the term of the reduced payment schedule;
- 2) the interest rate upon which the reduced payments are calculated;
- 3) the rate at which the interest is actually accruing; and
- 4) the annual percentage rate.

Moreover, the annual percentage rate that is stated in the ad must take into account the interest that will accrue but will not be paid during the period. An example of an advertisement using these terms would be the following: "Effective interest rate for first two years of 8 percent. Interest being earned at 12 percent. Annual percentage rate 14 percent." (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 47. *If, as part of the transaction, the seller or other party pays an amount, either to the creditor or to the consumer, to reduce the borrower's payment (that is, to "buy down" the interest rate for a portion of the credit term), may the seller or creditor advertise the reduced simple interest rate?***

**A** Yes. However, when advertising *buy downs*, the advertisement must also disclose the term to which the reduced rate applies and the simple interest rate applicable to the balance of the term. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 48. *Can a financing advertisement simply discuss the APR, monthly payment or finance charge being offered without describing other features of the loans being advertised?***

**A** It depends on the term being advertised. Certain financing terms cannot be advertised alone. In other words, if certain financing terms are mentioned in an advertisement, the ad must also contain a list of additional disclosures. The reason for this rule is to assure that consumers receive a complete picture of the available financing. See Question 49 for more specific details.

**Q 49. *What are the terms that, when mentioned in an advertisement, "trigger" the need for additional disclosures?***

**A** The use of any one of the following terms in an advertisement will “trigger” the required inclusion of additional terms:

**1. Downpayment** (amount or percentage)

- o Example: “Only 5% down”
- o Example: “As low as \$100 down”
- o Example: “Total move-in costs of \$800.”
- o Example: “80% financing available” (implies 20% down)
- o **Note:** “No downpayment” does not trigger the additional terms.

**2. Payment Period** (number of payments required or total period of repayments)

- o Example: “48-month payment terms”
- o Example: “30-year mortgage”
- o Example: “Repayment in as many as 36 monthly installments”
- o **Note:** No additional terms triggered by statements such as “monthly payment terms” or “take years to repay.”

**3. Payment Amount** (dollar amount of any payment)

- o Example: “Payable in installments of \$103”
- o Example: “\$600 per month”
- o Example: “\$40,000 balance payable in 36 equal installments”

**4. Finance Charge** (dollar or percentage/points amount)

- o Example: “\$500 total cost of credit”
- o Example: “\$2 monthly carrying charge”
- o Example: “\$50,000 mortgages, 2 points to the borrower.”

The following do not trigger the requirement of additional disclosures:

- APR

- APR and simple interest rate
- "No closing costs"
- "No down payment"

(Reg Z § 226.24(c); Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 50. What are the additional terms required when any one of the four terms above in Question 49 are present in an advertisement?**

**A** The additional disclosures that must also appear in the advertisement are:

1. the amount or percentage of the **down payment**;
2. the terms of **repayment**;
3. the **annual percentage rate**, and that term or "APR"; and
4. that the rate may be increased after closing, if that is true.

(Reg Z § 226.24(c); Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 51. If an advertisement simply states that no down payment is required, is there a need to make the additional disclosures?**

**A** No. (Reg Z § 226.24(c); Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 52. If an advertisement describes "total move-in costs of \$500" is this considered to be a mention of a "down payment" requiring the additional terms?**

**A** Yes. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 53. What are examples of mentioning the "number of payments" or "period of repayment?"**

**A** This would include such statements as "60-month payment terms," or "repayment in as many as 60 installments." If, on the other hand, an ad simply mentions "monthly payments," this does not trigger the need for the additional disclosures. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 54. *If the amount of any payment is not specifically mentioned in the advertisement, but can be calculated based on other information included in the ad, has the "amount of any payment" been mentioned so as to trigger the additional disclosures?***

**A** Yes. If the payment amount can be determined in any way from the language of the advertisement, the additional disclosures must be made. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 55. *What does "finance charge" mean for loan transactions secured by real property?***

**A** For purposes of determining whether additional disclosures must be made, "finance charge" includes in its definition the following: interest (add-on interest such as time price differential—not APR), loan fees, buyer's points, finder's fees, assumption fees, insurance premiums. (Reg Z § 226.4.)

It does not include, however, seller's points, title fees, title insurance, fees for preparing deeds, reconveyances and settlement documents, notary, appraisal, inspection, and credit report fees, and any other amounts required to be paid into escrow if the amounts will not otherwise be included in the finance charge. (Reg Z § 226.4.)

**Q 56. *When disclosing down payment, must the exact words "down payment" be included in the advertisement?***

**A** No. The total down payment may be disclosed by stating either a dollar amount or a percentage. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

**Q 57. *How may disclosure of repayment terms be accomplished?***

**A** There are many ways to express terms of repayment or the payment schedule. For example, in some advertisements, a single transaction is not being referred to and a cost per unit description would be acceptable. In other words, an advertisement might say "36 monthly payments of \$31.50 per every \$1,000 borrowed." If the note being advertised contains graduated payments, the advertisement may simply state the range of payments and the fact that all of the payments will vary between the two amounts mentioned. (Reg Z § 226.24; Official Staff Interpretation, Division of Consumer and Community Affairs, Federal Reserve Board.)

<b>IX. Advertising Over the Internet</b>
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**Q 58. Are there any special restrictions on advertising over the Internet?**

**A:** Yes. Although there are currently no federal laws restricting Internet advertising, the DRE has a regulation that primarily targets persons advertising real property services—those services for which a real estate license is required-- to potential purchasers in California but who are not real estate licensees in California. Basically the regulation permits such Internet advertisements if:

- the advertiser does not direct his/her services to any particular person or customer located in California;
- the advertisement is limited to general information about the services; and
- the advertisement includes the statement, "The services referred to herein are not available to persons located within the State of California."

This law should have no impact on a California real estate licensee. (10 Cal. Code Regs. § 2770.)

For additional information such as placing MLS listing information on a REALTOR® website and laws concerning obtaining confidential information online, refer to the following legal memoranda:

- **The Basics About Internet Data Exchange ("IDX")**
- **"Framing" on the Internet**
- **The Internet and Issues Related to the Real Estate Industry**
- **Online Privacy Laws Affecting REALTORS®.**

**Additional Information**

**Q 59. Where can I get more information about advertising?**

The FTC has a brochure available online, **How to Advertise Consumer Credit & Lease Terms.**

Furthermore, the following legal memoranda cover select advertising topics:

- **Advertising by Telephone, Fax and E-mail**
- **Online Privacy Laws Affecting REALTORS®**
- **Real Estate Signs: Can They Be Regulated And To What Extent?**
- **Regulation Z Advertising Disclosures**
- **Short Sale Advertising**
- **Use of the Term "Sold"**

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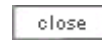
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California Association of REALTORS®  
Member Legal Services  
525 South Virgil Avenue  
Los Angeles, California 90020

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