



Electronic Communications and Advertising **A Legal and Ethical Review**

Throughout society, there seems to be a general feeling that the online world is “different,” and that all the rules that usually apply to a particular activity don’t (or shouldn’t) apply when that activity happens online.

In real estate, this is often seen in the confusion regarding the rules that apply to various types of online advertising. To put it bluntly, **ALL** of the advertising laws, regulations and policies that apply to “real world” advertising also apply to online advertising. And while there are special rules that exist for electronic advertising, those rules are **MORE** restrictive, not less restrictive.

This article will provide a brief overview of the various rules that apply to advertising – online and otherwise – and a few examples of how these rules might be interpreted and implemented in certain circumstances. Salespersons with questions about the rules should discuss those questions with their brokers; brokers with questions should speak with their brokerage counsel. REALTOR® members looking for additional guidance may contact the [PAR Legal Hotline](#).

Where are the Rules?

The general advertising rules for REALTORS® are found in four primary places:

- 1) [The Pennsylvania Real Estate Licensing and Registration Act](#) (RELRA)
- 2) [The Rules and Regulations of the State Real Estate Commission](#)
- 3) [The NAR Code of Ethics](#)
- 4) Your Broker’s Policy Manual

You will also find specific rules and restrictions in a number of other places including the [state and Federal Do-Not-Call laws](#), the [Federal CAN-SPAM](#) law, MLS IDX rules and policies, and the NAR Membership Marks Manual (regarding use of the term “REALTOR®”).

These sources are listed in this order for two reasons. First, they’re in order of priority. If there is a requirement or prohibition in the law or regs, it overrules the Code of Ethics. Similarly, if there is something in your Broker’s policies that seems to contradict what is in the law, regulations or Code, the broker’s policies may well be wrong. It is no excuse to tell the State Real Estate Commission or an Ethics hearing panel, “But the broker said I could!”

The second reason for putting them in this order is that the further down the list you go, the more specific the rules become. RELRA is very broad (pretty much just forbidding misrepresentation and untruthful advertising), the regulations add a few items, the Code of Ethics incorporates a number of specific requirements, and your broker may then impose additional controls for business and supervision purposes. Don’t assume that just because something isn’t prohibited under the law or regulations you can do it – you must check all levels to be sure.

What is Advertising?

This article will use the term “advertising” as a general terms, but the restrictions are actually far broader than what you’d think of as advertising. For example, the State Real Estate regulations use the phrase “advertise or otherwise hold themselves out to the public...” (§ 35.305(b)), and Article 12 of the Code of Ethics speaks to “real estate communications” as well as “advertising, marketing, and other representations.” Clearly, the rules do not *just* apply to what you might consider to be formal “advertising” of yourself or your listings – the



rules apply to all communications and representations that you make as part of your real estate activities. By way of example, the following items are covered by some or all of the various restrictions:

- Newspaper advertisements
- Television or radio advertisements
- Flyers, postcards and doorhangers
- Business Cards
- Yard signs (including any directional signs that identify the broker/licensee)
- E-mails regarding listings or your services
- Web sites maintained by a broker or salesperson
- Paid ads on search engines
- Anything about your services or listings posted on Craigslist, Facebook or MySpace
- Text messages or Twitter 'tweets' when done for the purpose of advertising services or listings

In short, if you're a REALTOR® putting out information with a goal of getting someone to use your services or buy one of your listings, you're covered. Period.

What are the Rules?

Pennsylvania Law

In Pennsylvania law, the main restrictions are that licensees may not make a "substantial misrepresentation" or a "false promise," and may not engage in any "misleading or untruthful advertising." (§455.604(a)(1)-(4)) primary advertising restriction is that any real estate advertisement by a licensee must contain the business name and telephone number of the licensee's employing broker, and the size of the name and number must be equal to greater than the size of the licensee's name and number. That's pretty broad, and doesn't really give a lot of guidance.

Rules & Regulations

The Commission regulations add a number of additional prohibitions and requirements. Sections 35.301-308 of the regulations cover some specific topics that will not be covered here (including: sales volume; contests, prizes and gifts; and panic selling), though they are very important to know if you're doing that kind of advertising. The three main general requirements that apply to all advertising are found in section 35. 305:

- 305(a) requires that a broker may advertise only under the name designated on its license. For example, if the licensed brokerage name is "XYZ Realty/Harrisburg" then it is not legal for that brokerage to advertise or hold itself out to the public as "The Harrisburg Office of XYZ Realty."
- 305(b) requires that an individual licensee must advertise under the name on his or her license, and may only use a different nickname if it is registered with the Commission (you can register a nickname on your [initial license form or your renewal form](#)). So if your full registered name is "Edward Bartholomew Higgenbothom" but you go by "Chip" most of the time, be sure to register "Chip" as your nickname.
- 305(c) is the one most people know about. This section requires that any advertisement by a licensee contain the name and telephone number of the broker, and that the broker's information be at least equal size to the licensee's information.



NAR Code of Ethics

The Code of Ethics has a number of provisions that cover advertising and other representations to the public in various ways. The rules in the Code are in *addition* to those in the law and regulation, and they are generally more specific and/or restrictive.

In response to questions about the applicability of these rules for online and electronic communications, NAR began implementing changes in 2007 to make it perfectly clear that the Code applies in all circumstances, regardless of the method of communication. For example, Standard of Practice 1-2 now states that “the duties imposed by the Code of Ethics encompass all real estate-related activities and transactions whether conducted in person, electronically, or through any other means.” Several other provisions were amended in a similar manner. Even the Preamble, which is rarely changed, was amended to clarify that the Code covers “activities whether conducted personally, through associates or others, or via technological means....”

In addition to these amendments, 2007 and 2008 saw a total of seven newly adopted Standards of Practice dealing specifically with online and ‘technological’ methods of communication. Five of these were additions under Article 12, which covers “real estate communications and...advertising, marketing, and other representations.”

While the Code contains many provisions covering advertising and communications, this document will address primarily those that relate to specific information or disclosures that must be made in real estate communications and advertising. REALTORS® should be familiar with the entire Code, of course, to ensure compliance with all provisions.

- “REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations.” (Article 12)
- “REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing, and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional.” (Article 12)
- Article 12 applies to information on a REALTOR®’s website, and includes requirements that the REALTOR® keep the information current and that any inaccuracies be corrected. (Standard of Practice 12-8)
- A brokerage website is required to disclose the firm’s name and state(s) of licensure “in a reasonable and readily apparent manner.” A salesperson in a REALTOR® office must disclose the firm’s name and the licensee’s state(s)of licensure in a “reasonable and readily apparent manner.” (SoP 12-9)
- It is not permitted to use or register domain names or URLs that present less than a “true picture” of their business (Standard of Practice 12-12).
- Misusing metatags or keywords to improperly redirect traffic to a website is prohibited, as is the deceptive or misleading manipulation of others’ data or the framing of their information (Standard of Practice 12-10).



Broker's Policy Manual

As a general matter, each broker should have some sort of a policy manual covering the major aspects of practice for those licensees affiliated with the broker. This manual will often contain requirements and/or restrictions related to advertising. For example, many brokers require the use of a particular logo or certain colors in any advertising. Some might mandate that ads be approved by staff before being placed, and others may do certain advertising for the salesperson. Some brokers maintain sites for their agents or provide access to approved template sites, others may impose certain limitations on the type information and/or designs that may or may not be used on a site.

Brokerage policies can impose requirements that are stricter than those found elsewhere. For example, the law requires that the broker's name must be at least equal in size to the salesperson's name in any advertisement. A broker would be within his rights to go further than that and require that any advertisement have the brokerage logo twice the size of any agent name or logo. A brokerage policy manual cannot in any way override the law, regulations or code, however. To use the same example, a broker could not legally have a policy that allows a salesperson to advertise without using the brokerage logo.

Application of the Rules

All of the various rules laid out above (as well as some others, depending on the circumstances) come into play when actually communicating or advertising electronically. Some common advertising and/or communication methods are laid out below.

NOTE: These explanations are provided for informational purposes only and do not cover every concern that must be addressed for any particular type of communication. Be sure to check with brokerage counsel and/or your personal attorney if there are any questions about actions you may be taking. Remember that any regulatory [complaint](#) made to the State Real Estate Commission or ethics [complaint](#) made to a local Professional Standards Committee will be heard and decided on the merits of that case.

- **Websites**

- A brokerage Web site must contain the broker's full registered name, telephone number, and the state(s) in which the brokerage is licensed to sell real estate. Information must be up-to-date and any errors that are pointed out to the broker must be corrected in a timely fashion.
- An individual's website must contain the full registered name of the licensee (or a registered nickname), the state(s) in which the he or she is licensed, and the broker's full name and telephone number. The broker's information must be as large as, or larger than, the salesperson's information.
- The URL/domain name of any website must present a "true picture" and may not be misleading. Several [Case Interpretations](#) to the Code of Ethics were adopted in 2008 that help identify some of the parameters that must be observed. Prior interpretations, as well as an optional MLS rule, may also restrict the use of the phrase "mls" in a REALTOR® domain name.
- [NAR rules](#) prohibit the use of the word "realtor" in a domain name unless it is associated with the name of a member or a firm; it may **NOT** be used in any other context. For example, "JohnSmithRealtor.com" and "SmithRealEstateRealtors.com" would be acceptable. "WorldsBestRealtor.com" or "WashingtonRealtor.com" or "YourRealtorForLife.com" are all prohibited.



- **E-mail**
 - Sending e-mail for the purpose of promoting yourself, your services or your listings would be considered advertising. Even an e-mail sending listing information to a current client or a drip e-mail campaign to former clients would be considered to be “real estate communications” and would be covered by some or all of the relevant rules.
 - To the extent that an e-mail is considered to be advertising, the e-mail must contain the name and phone number of the broker in a manner that is as large as, or larger than, the licensee’s name.
 - Any e-mail advertising or real estate communication sent by a REALTOR® must make “readily apparent” that it was sent by a real estate professional. If a licensee’s name and broker’s name and phone number are on the communication, that probably meets the criteria. If there is some real estate communication that isn’t advertising – a status update for an ongoing transaction, for example – there must be something that makes it apparent that the communication is from a real estate professional and that the recipient has been made aware of that fact.

- **Search Engine Placement**
 - Using Search Engine Optimization techniques to improve the placement of your website in search engine results is permitted, as long as the methods themselves are not misleading and they do not present less than a “true picture.” For example, it would likely be acceptable for a salesperson who works in the city of York to use keywords or metatags such as “York Real Estate” “Real Estate In York” and “York Homes” to make her website appear more relevant to search engines. But if her primary competitor is a company called “Hanover Realty” it *would* likely be a violation if she used keywords or metatags such as “Hanover Realty” or the misspelled name “Hanovar Realty” in order to capitalize on searches for that competitor.
 - Buying paid ads linked to search terms is not prohibited as long as the criteria for showing the ads do not present less than a “true picture.” For example, it would probably be acceptable for Henry Lerner to pay to display an ad when a search is done for “Henry Learner” (a common misspelling of his name), but not to pay for an ad that displays in response to a search for “John Williams” (a local competitor).
 - Any paid ad where the REALTOR® has control of the content must comply with all the relevant advertising rules, and *must* include the broker’s name and phone number. It is no defense if the format of the advertisement somehow doesn’t permit this much information to be included – if you can’t comply with the law, don’t place the ad.

- **Social Media and Networking Sites ([Facebook](#)/[MySpace](#)/[LinkedIn](#)/etc.)**
 - Is a REALTOR®’s Facebook profile an advertisement or a real estate communication? That answer would have to be determined after looking at the purpose and use of the site, and would ultimately be decided by the State Real Estate Commission or an ethics hearing panel in response to a specific complaint. Although there really is no “case law” to go on at this point, a good rule – using an abundance of caution – would be that if any part of the purpose is to promote the REALTOR®’s professional services or listings, then it is covered by these rules. *All* of the rules.
 - Any real estate communication on these sorts of sites should comply with the relevant rules for websites, including the appropriate inclusion of the broker’s name and phone number, and the licensee’s state(s) of licensure. This will need to be accomplished differently for each application depending on the functionality of the site. For example, Facebook has a spot under your profile picture to “write something about yourself.” This text field could be



filled in with information stating that you are a real estate salesperson who works for XYZ Real Estate and can be reached at the following telephone numbers.

- The law/regulations/Code don't provide exclusions for using applications that don't easily accommodate the rules, nor do they recognize an exception based on the claim that "nobody else is doing it." If you can't figure out a way to comply with the relevant rules, the safest approach is to not use that medium
 - To the extent that you are unsure of the best way to handle compliance in a particular application, be sure to check with your broker and brokerage counsel.
- **Text Messages/Instant Messages/SMS/Twitter**
 - These are among the newest and most different ways to communicate, but there are many similarities to the "conventional" methods of advertising.
 - Use of these mediums with existing clients is probably going to be considered a "real estate communication" under the Code of Ethics rather than advertising. In many ways, it is little different than making a quick phone call or even sending a hand-written note. Viewed in this light, it is likely not going to be necessary to have the broker's name and telephone in every message, but it will still be necessary to make it apparent that the communications are coming from a real estate professional and that the recipient has been informed of this fact. To the extent you're using a phone number, username or other identification that the customer or client has been told to associate with your communication, that requirement has likely been met.
 - In some cases, these applications may be used for broader direct or indirect marketing or prospect development. For example, a salesperson with a Twitter following might send a 'tweet' that says something like "Finally listed the Johnson house on Main Street!" or he might seek out real-estate related tweets to answer in order to develop a reputation for knowledge in his market. These activities could easily be considered to be advertising or marketing, which would bring them under all the advertising requirements.
 - To the extent any of these communications are considered advertising, the advertising rules should be followed -- PAR has no guidance from the State Real Estate Commission or NAR suggesting otherwise. That said, however, it will be virtually impossible to include the required contact information in every text message or Twitter message. If you are considering using these sorts of things for advertising or marketing purposes, check with counsel to obtain advice and information on compliance. For example, your broker may feel comfortable suggesting that you can use Twitter for advertising and marketing purposes as long as your profile contains all the relevant brokerage information and any other disclosures, even if they are not in the actual messages.

Conclusion

Many practitioners seem to believe that since "things are different online" the usual rules of advertising shouldn't apply. But the fact of the matter is that not only do the offline rules apply to online advertising and communication, there are actually a number of additional rules – mostly in the NAR Code of Ethics – that are imposed *in addition to* the regular rules. As with most regulatory and ethics issues, the key is to read and understand all the rules before starting out on a new venture, and to talk with your broker and, if necessary, brokerage counsel before moving forward.