

REAL ESTATE ADVERTISING

I. Overview

Advertisements are a fundamental aspect of the real estate profession; not only do they procure potential customers and clients, but advertisements are often a representation of a licensee and brokerage's ability to complete a transaction accurately and professionally. For the purposes of this Guideline, "advertisement(s)" refers to **ALL** types and formats – including websites, social media, emails, printed material, texts, articles of clothing, car wraps, et. – which potentially identify, represent, or promote to the public information that is related to licensed real estate activity.

This Guideline discusses the advertising requirements applicable to licensees under Idaho Real Estate License Law. It should be noted that this Guideline will not delve into trade association codes, franchise requirements, federal regulations, or the Idaho Consumer Protection Act provisions governing advertising. Rather, this Guideline remains limited in scope to the Idaho Real Estate License, Law; applicable parties should look elsewhere for assistance and enforcement of these other regulations.

Idaho Code 54-2053 outlines the requirements for advertising in real estate:

(1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any time of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

(2) All advertising of listed property shall clearly and conspicuously contain the broker's licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.

(3) All advertising by licensed branch offices shall clearly and conspicuously contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or prospective customers or clients that is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.

As you can see, Idaho's advertising law for the real estate industry is fairly simple, and straightforward; however, it is within the nuances that trouble may arise.

II. Frequently Asked Questions

1. What information **MUST** appear in all advertising of a listed property and brokerage services?

The broker's full licensed business name.

2. Can I use a logo, abbreviation, or team name instead?

No. A logo, abbreviation, or team name are not sufficient forms of identification if they do not contain the broker's full licensed business name. These can be added as supplemental information, but the broker's full licensed business name **MUST** be included.

Similarly, individual licensees **MUST** conduct business in the name on their real estate license. A licensee must be licensed in his/her legal name and can use a nickname, so long as it is registered with the Commission.

3. If I work for a branch office or franchise, can I use that name instead?

No. Branch or franchise names by themselves are not sufficient forms of identification.

4. What about an assumed business name also known as a DBA (or doing business as) name?

If an assumed business name is registered with the Commission, only the assumed business name should be used, i.e., Affiliated Brokerage Company, LLC has an assumed business name filed with the Commission as ABC Brokerage, LLC. The brokerage should only advertise under their recorded assumed business name of ABC Brokerage, LLC.

5. What about unlicensed staff?

If unlicensed person appears or are named in Idaho Advertising, they **MUST** be properly identified as unlicensed.

6. What about a brokerage that has staff from the brokerage that are licensed in another state but not licensed in Idaho?

Only licensees who are **actively** licensed in Idaho may be featured in Idaho real estate advertisements.

7. Are there special requirements if I am advertising on my OWN property?

Licensees may list their properties with their brokerage or another brokerage and are allowed to offer their personally held real property "by owner." However, if selling "by owner" such an advertisement is misleading unless it includes the term "Owner/Agent" or some similar disclosure. Additionally, if a licensee is selling property "By Owner" they may not use their brokerage name or sign. Using a brokerage name or sign when the property is not listed with the brokerage is misleading.

Licensees must also remember that although the law requires licensees to conduct their personal transactions through the brokerage they are licensed with, it does not require that they employ the services of that brokerage.

8. What does "clearly and conspicuously" even mean?

Black's Law Dictionary defines **clear** as "plain" or "evident" and **conspicuous** as "easily

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noticeable and obvious.”

9. What does the Commission consider to be “misleading” information?

Information is defined as misleading “if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.” For example, if an advertisement includes the full brokerage name, but it is minimized too small to notice. Another example could be misrepresenting the property structure, city, lot size or features of a property on the advertisement.

This may also apply to any images used in an advertisement. Licensees should not use images that have been edited in a way that may misrepresent or conceal the current condition of the property. Licensees are cautioned that photographs taken by others are considered copyrighted. This includes photos taken by other brokerages.

10. How do I meet advertising requirements for my brokerage or personal website?

Whenever a licensee owns or controls a website and its content, every viewable page **MUST** include the broker’s licensed business name. (A “viewable” page is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.)

All licensees should periodically review the advertising and marketing information on their websites and social media pages and update as necessary to assure the information is current and not misleading.

Licensees should also be aware of the legal requirements regarding the use of metadata or metatags.

11. Are there any special requirements for advertisements on social media?

The broker’s licensed business name is to be prominently displayed if there is room on the platform being utilized. The Broker’s licensed business name is to be no more than one click away from the viewable page, when the platform does not have sufficient space on the initial page for the information to appear.

12. Do I have to include my broker’s licensed business name on EVERY piece of correspondence (like email or texts) with a customer or client?

Emails or other types of correspondence advertisements shall include the broker’s licensed business name at the beginning or end of each message. However, it is always a good idea to include an email signature – not only for personal protection, but to provide contact information to customers and clients.

Licensees are not required to include the broker’s licensed business name in text, so long as that information was provided previously or via another medium prior to providing, or offering to provide, brokerage services requiring a license. Licensees may always choose to voluntarily provide this information, even when it is not expressly required.

13. What is my responsibility if I use third-party for my advertisements?

Sites maintained by the multiple listing service(s) of which the licensee is a member and other

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third-party sites which display MLS data shall be monitored to ensure they are updated in a timely manner and in compliance with Idaho License Law and Rules.

Before choosing to advertise on a third-party site, a licensee should review the sites practices for updating and archiving information to ensure they can remain compliant with advertising laws, should they choose to use the site.

The Commission prefers to educate licensees on all manners of real estate regulation – including advertising. Licensees should keep in mind that most of the advertising complaints received by the Commission come from the industry itself. Licensees should always seek legal advice regarding advertising compliance with local, state, and national regulations. Compliance with Idaho real estate license law does not ensure compliance with other jurisdiction guidelines, laws, or regulations, or REALTOR® Code of Ethics.

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