

INTERNET AND SOCIAL MEDIA ADVERTISING

Licenses can use the Internet in multiple ways to contact consumers about real estate services and to advertise properties or their services. Licensees should be aware that all statutes and rules respecting advertising apply equally to the Internet. This includes websites, e-mail, and any other potential “on-line” identification, representation, promotion, or solicitation to the public that is related to licensed real estate activity.

This guideline discusses required information that **must** be included by licensees in all advertising and provides a few examples of advertising that the Commission considers misleading. More ways to use the Internet are likely to be invented, and this guideline is subject to change at any time as practice on the Internet evolves. Further, it is impossible to illustrate every possible advertisement that could be considered misleading.

Required Inclusion of Broker’s Licensed Business Name. Section 54-2053(2) of the License Law requires all advertising of listed property to include the broker’s licensed business name. A brokerage that registers a “DBA” (“doing business as” or fictitious trade name) with the Secretary of State may be licensed in that name; in that case, the DBA name must be used. The broker’s licensed business name must be advertised exactly as it appears on the license.

Proper disclosure of licensed business names will help ensure that online consumers know when they are dealing with a real estate licensee and identify the brokerage where the licensee can be found.

Misleading Advertising. Section 54-2053(4) of the License Law prohibits a licensee from providing “misleading” information to the public or prospective customers or clients. 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.” **The Commission interprets this section to require any licensee who is advertising real estate brokerage services to include the broker’s licensed business name so as not to mislead or deceive the public** about the advertiser’s status as a licensee or the brokerage where the advertiser is licensed.

All Internet-related advertising of listed property or brokerage services that consumers can view or experience as a separate unit (for example, e-mail messages or web pages) must include the broker’s licensed business name. The burden of the requirement falls on the licensee and the designated broker. However, in the case of e-mails or other electronic messages, the broker’s licensed business name is not required once an agency relationship has been established with a buyer or seller.

It is recommended that each brokerage develop and maintain a written policy regarding use of Internet and social media advertising by its sales associates and employees.

- **The Web**

Whenever a licensee owns a website or controls its content, every viewable page should 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.) If a licensee gives permission for a third party to advertise listings, the licensee should maintain regular and thorough oversight to ensure the information is correct. It is also important to adhere to copyright laws.

- **E-mail Farming, News Groups, Discussion Lists, Bulletin Boards, Blogs, Video Blogs, Facebook, MySpace, LoopNet, and Similar Media**

Such formats should include the broker's licensed business name at the beginning or end of each message. This would not apply to subsequent communications between a licensee and a member of the public where the licensee's initial communication contained the broker's licensed business name.

- **Instant or Text Messages**

The broker's licensed business name is not necessary in this format if the licensee provided the information via another format or medium (e.g., e-mail or letter) prior to providing, or offering to provide, brokerage services requiring a license.

- **Chat**

Disclosure of the broker's licensed business name prior to providing or offering to provide brokerage services must be made during the chat session or in text visible on the same web page that contains the chat session.

- **Social Media**

The broker's licensed business name should be prominently displayed and be no more than one click away from the viewable page.

- **Multimedia Advertising (e.g., web based, executable e-mail attachments, etc.)**

The broker's licensed business name should be visible as part of the advertising message.

- **Banner Ads**

Banner ads must link to a web page, no more than one click away from the viewable page, that includes the broker's licensed business name, unless the banner ad itself contains the broker's licensed business name.

Procuring Prospects "On-Line." The Internet poses additional problem areas for licensees:

- Licensees who maintain individual websites should ensure that when listings have expired or are no longer available, they are removed from the websites in a timely manner.

- Similarly, sites maintained by the multiple listing service(s) of which the licensee is a member and other third party sites which display MLS data should be monitored to ensure they are updated in a timely manner and in compliance with Idaho License Law & Rules.
- Licensees who submit information to third party sites should provide written communication of any change of listing status to the publisher in a timely manner.
- Licensees should refrain from giving the impression they are licensed or providing services in jurisdictions where they are not licensed.
- **Misleading Images.** Licensees should not use images that have been edited to give an inaccurate representation of the property or images that misrepresent or conceal the current condition of the property. Licensees may not use images to mislead consumers concerning the identity of the individuals actually providing the brokerage services. Licensees are cautioned that photographs taken by others are considered copyrighted. This includes photos taken by other brokerages.
- **Metatags** are descriptive words hidden in a website's HTML code that search engines use to index the website. Most sites use common words such as "real estate," "Idaho," city names, "homes," "houses," etc., which is acceptable. However, some licensees have also inserted a competitor's names (or the names of other businesses) into their website metatags, so when a potential customer searches for the competitor's (or other business's) site, the licensee's site will also come up as a match. This should not be done; courts have ruled that this constitutes trademark infringement.
- **Domain names.** A brokerage should maintain a written policy on ownership and use of domain names by its licensees, including continued use of the domain name when an associate separates from the brokerage. An e-mail address containing a brokerage domain name should not be used by a licensee who is licensed at a different brokerage.
- 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 advertising on the Internet should seek legal advice regarding 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 the REALTOR® Code of Ethics.