

ADVERTISING – FALSE AND MISLEADING

Purpose: To explain false and misleading advertising.

This bulletin applies to all real estate and mortgage broker professionals.

Industry professionals must avoid misrepresentations or conduct that is reckless or intentional and that misleads or deceives any person. This includes advertising.

Advertising includes any activity, public notice or representation an industry member professional makes or that someone makes on behalf of an industry professional that promotes an industry professional or their services. This includes real estate trades, mortgage deals, property management services, and real estate appraisal services. Advertising includes print, radio, television, electronic, or publication on the Internet.

Advertisements must not be false, inaccurate, capable of misleading the recipient or intended recipient, in bad taste or offensive, harmful to the best interests of the public or industry, or prohibited by law.

Advertising includes all promotional events, printed material, circulars, pamphlets, billboards, signs, business cards, letterheads, bench signs, fax cover sheets and other similar materials.

To determine if advertising is misleading, the Real Estate Council of Alberta (RECA) considers the literal meaning of the advertisement and the general impression it creates.

- advertising is misleading when it makes a representation or claim that is false or misleading *in a material respect*
- advertising can be misleading even if there is no proof a consumer was misled. It is only necessary to show the advertisement is *capable of misleading a reasonable consumer*

Inadvertence, negligence, incompetence and recklessness can result in misleading advertising, as can intentional misrepresentations (intentionally untrue statements).

Industry professionals who make performance representations or claims must be able to demonstrate that the basis for their representations are adequate.

When brokers, associate brokers and associates advertise, it is always on behalf of their brokerage. Brokers are responsible for all associate and associate broker advertising, and should have policies and procedures for the submission and review of advertisements, including websites. Brokers should review advertisements to see if they're misleading, and to ensure the associate isn't making any claims or incentive offers that aren't being offered by the brokerage.

Industry professionals also need to consider the following when developing advertisements:

Permanence

- if the information in the advertisement is subject to change, use a short-term advertising vehicle or one that can be easily updated
- when using longer-term advertising vehicles, you need to ensure the advertisement is accurate as long as it is in the public domain. If facts in an advertisement change, you must correct or delete the inaccurate information

Indirect endorsements

- avoid giving the impression of someone endorsing you unless the person gave their written confirmation of the endorsement
- do not use a trademarked logo other than on for which you have the rights; doing so may also be a potential copyright or trademark interference

Restrictions or conditions apply references

- only use the statement "terms and conditions apply" when the conditions do not substantially alter the offer
- if the terms and conditions substantially alter the advertisement, you must clearly disclose the terms and conditions within the actual advertisement.

Use of industry terms not readily understood by consumers

- when using industry-specific terms in advertising, present the information in such a way that the consumer will have a clear understanding of what the advertising means.
- for example, claims regarding the listing commission or selling commission may unintentionally mislead the public; the public often

does not realize each of these terms refers only to a portion of the total commission payable.

Comparisons to other industry members

- if considering comparative advertising, ensure you:
 - present the facts and figures in a clear, straightforward way
 - qualify the facts and figures as necessary to ensure they are not taken out of context
 - have reliable facts and base the conclusions on adequate and proper tests

Use of terms implying special qualifications or expertise

- if you are advertising that you have special qualifications or expertise either in specific industry sectors or in geographical areas, ensure you are in a position to demonstrate the qualification or expertise is accurate

Bait and switch tactics

- do not communicate an offer to a consumer to get a foot in the door and then substantially change the offer
- this is “bait and switch” advertising and it is illegal in Alberta and most jurisdictions across Canada
- all industry members to consider whether the marketing programs at these seminars are misleading before implementing the program.

Internet advertising

- you must keep all online sources of the same listing information current and consistent
- online listing information must be consistent with the property description. You must update material changes to property description in a timely manner

Examples of misleading advertising that applies to all industry professionals

- holding yourself out as a specialist in a given area when you do not have the necessary education and experience to advertise such a specialty
- including an unlicensed assistant in the advertising without qualifying that the assistant is unlicensed
- enticing a party to act using an deliberate misrepresentation, for example, justifying a commission rate by stating that industry associations or some set body sets the commission rate

Misleading real estate advertising may include

- advertising a property for sale without a brokerage agreement and without the owner’s consent

- advertising that leads the public to believe they may buy real estate with no money down. Exercise caution and provide an explanation as to how the down payment (no money down) may be raised without recourse to personal funds; e.g. rebate opportunities, gifting or other innovations.
- advertising a brokerage incentive that states, "Our brokerage promises to pay you \$1,000 if your property does not sell within 90 days. Terms and conditions apply" if in order to qualify, the brokerage must still sell the property and the \$1,000 is actually just a commission reduction
- including statements such as "why pay for a single associate when you can get a whole team working for you" might be misleading because in common law, clients always contract with the entire brokerage
- statements such as "sell your home faster and for more money" are misleading unless you have reliable facts and the basis for those conclusions have adequate and proper tests
- advertising a brokerage commission rate of 3% if the brokerage also charges higher commission rates and the lower rate is only available with a lower level of services. If the real estate brokerage runs an ad in the newspaper promoting its brokerage commission rates at 3%, this leaves the impression that all of the brokerage's commission rates are 3%. If there was no indication in the ad of the lower level of services, the ad would be misleading. Using language such as "Rates Starting From 3%" could avoid the misrepresentation
- when advertising that a buyer may assume a mortgage, don't misrepresent the purchase potential it. It is not enough to advertise a buyer may purchase the property with a low down payment without providing full details. If the buyer must qualify to assume the mortgage, you need to state that.

Misleading property management advertising may include

- advertising that the landlord will perform certain repairs when the landlord has not made such a commitment
- advertising that all new tenants get the first month rent-free. The property manager does not state the offer is good only for new tenants that sign a two-year lease

Misleading mortgage brokerage advertising may include

- phrases such as:
 - we provide professional advice so you can make the best choice
 - we will ensure the mortgage you get will be the best possible mortgage for you
 - we'll get the best rate for youimply the brokerage will represent borrowers to help them get the best mortgage terms possible. If the mortgage brokerage is acting as an

intermediary between borrowers and lenders, using such phrases is false or misleading

- do not advertise interest rates that do not accurately reflect the actual mortgage interest rate. Take care in interest blending circumstances
- take care when advertising “mortgage sales” with lower rates, if there are significant restrictions in comparison to other mortgages

Related information

Legislation

- *Real Estate Act Rules* – s.42(a)

Information Bulletins

- Incentives
- Advertising – Internet Guidelines
- Advertising – Brokerage Internet Policies