

License Law: Advertising Source: Ohio Association of Realtors

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License Law and Advertising

Question 1: If my agent is selling or leasing her own property, does she have to include the brokerage name in any advertisements?

Answer: The name of the brokerage should only be included in the ad if the property is listed with the agent's broker. If it is not being offered through the brokerage, only the agent's name should appear. In that case the agent must be sure to identify herself as a licensed agent. An example of proper identification would be: "Mary Jones, owner/ real estate agent."

Question 2: Does the brokerage firm name have to appear in advertisements along with the salesperson's name?

Answer: Yes. Ohio Revised Code Section 4735.16 provides that the brokerage firm name must appear in all advertisements.

Question 3: I am a sole proprietor, but I would like to do business in a name other than my personal name. Is there a way I can do this?

Answer: Yes. You may apply to the Ohio Division of Real Estate for permission to do business under a trade name or "dba" ('doing business as'). If approved, that would be the sole identifying name to be used by you in all advertisements. Such a trade name should also be registered as a fictitious name with the Ohio Secretary of State's office.

Question 4: My brokerage is licensed as a corporation and my corporate name includes the abbreviation "Inc.". Does this have to appear in my ads since it is part of my licensed name? Do I have to apply for a "dba" if I want to drop it in my ads?

Answer: Ohio Administrative Rule 1301: 5-1-02 provides that words or abbreviations appearing on a broker's license to indicate the legal framework under which he conducts business, such as "Inc." or "Co." are not required to appear in advertising. Therefore, it is not necessary to obtain a "dba" to drop the "Inc." in your ads.

Question 5: I am licensed as a sole proprietor. Can I add the words Realty, REALTOR or Real Estate to my name without applying for a "dba"?

Answer: Yes. Ohio Administrative Rule 1301: 5-1-02 clearly provides that these terms, although not a part of your name as it appears on your license, can be used by brokers in advertising without applying for a trade name. Therefore, if your name is John Doe, you can advertise as either John Doe Realty, John Doe, REALTOR or John Doe Real Estate.

Question 6: Can a salesperson's name be larger than the broker's name in print advertisements?

Answer: No. Ohio Revised Code Section 4735.16(B) provides that the broker's name must be displayed in equal prominence with the name of the salesperson in such advertisements. Therefore, the agent's name should not be larger or more prominent than the broker's.

Question 7: I am currently licensed as a salesperson, but I have a broker's license on deposit. Can I put "Broker" on my business cards?

Answer: No. Because you are not actually licensed as a broker you may not put this on your business card. You may put "broker on deposit" if you wish, as that is an accurate statement.

Question 8: An agent is contemplating a new promotional plan in which the agent will send a letter to past clients and customers asking them to provide the name of someone who wants to sell or buy. The client/customer would receive a gift certificate to a restaurant for providing the name. Does real estate license law prohibit this promotional plan?

Answer: Yes. The clients/customers would be assisting in the procuring of prospects for a real estate transaction which requires a license. Thus a licensee is prohibited from compensating a non-licensee for this activity.

Question 9: Does my brokerage name have to appear on promotional brochures, newsletters, etc. that my agent distributes marketing him/ herself?

Answer: Yes. Ohio Revised Code Section 4735.16 (B) requires that the name of the broker with whom an agent is licensed must appear in any advertisement of the agent.

Question 10: Can the salesperson put the broker's name on the back cover of a personal brochure but put their own name and picture on the front?

Answer: No. The Division of Real Estate does not consider this to constitute displaying the broker's name in equal prominence with that of the agent.

Question 11: I recall there being some sort of rule about "double dipping" when advertising your sales volume. (i.e. claims to have \$3 million in sales in 1994). What is this rule?

Answer: This refers to an opinion from the Ohio Real Estate Commission issued in the mid 1980's. According to this opinion, when advertising one's sales volume, you cannot count the sales price of an in-house transaction twice. Thus, if you listed and sold a \$100,000 home, you could only claim \$100,000 when figuring your sales volume. This rule does allow you to claim \$100,000 in sales when you are the listing broker/agent on a co-op transaction; it also allows the selling brokerage to claim \$100,000 in a co-op transaction listed by another firm.

Question 12: Does the "double dipping" rule apply to private sales awards programs of the Ohio Association, my local board of REALTORS, my brokerage or a franchise?

Answer: No. It only applies to advertisements quoting a dollar volume (i.e. \$500,000 sold in first quarter of 1995) not to private awards.

Question 13: When I advertise that I have received a sales award from my Local Board or OAR, do I have to indicate the year(s) in which I received the award?

Answer: The rules governing OAR's President Sales Club require that you must indicate the year or range of years in which this award was achieved. Your Local Board of REALTORS should be contacted regarding any rules it has governing the advertisement of the awards they bestow. However, even absent such a requirement by your Local Board, the general provisions in the license law against misleading advertisements would probably be interpreted to require that you indicate the year(s).

Question 14: I want to run an ad that compares the sales volume of my brokerage to those of other brokerages in the area. Are there any restrictions on this type of advertising?

Answer: Both the license law and the Code of Ethics contain sections that prohibit false or misleading advertisements. Therefore, the first and most obvious requirement for this type of ad is that it must be accurate. This means that if challenged by your competitors (as it most likely will be), you must be able to substantiate your claims or figures.

Secondly, if you are basing your comparative advertising in whole or in part on information provided by your Local Board of REALTORS or an MLS to which you belong, the MLS rules probably require that you indicate in the ad the period of time over which your claims are based. These rules most likely also require you to include in your ad a statement similar to the following: "Based on the information from the Board/ Association of REALTORS (or MLS) for the period (date) through (date)." Therefore, you should check the rules of the MLS to which you belong if you are utilizing "sold" comparable or statistical reports or the MLS of Board's as the basis for the claims made in your ad. Finally, if you are utilizing actual sales volume figures, the Ohio Real Estate Commission's rule on double dipping must be followed.

Question 15: What are the requirements for personal brochures my agent is sending to all homeowners in a subdivision?

Answer: Ohio Revised Code Section 4735.16 (B) requires that the name of the broker with whom an agent is licensed must appear in any advertisement of the agent. This section also provides that the broker's name must be displayed in equal prominence with that of the agent. In determining prominence, type size, style, color and placement will be considered.

Question 16: I am a broker and have just listed a home that my wife owns. Am I required to put "owner" on my yard sign since I will have to sign the deed to release my dower rights?

Answer: No. As you are not the title holder your yard sign should not include "owner."

Question 17: Does the Division of Real Estate consider advertising on the Internet to be advertising that must comply with the license law advertising requirements?

Answer: Yes. All license law advertising requirements apply to a broker's ads on the Internet.

Question 18: A brokerage has a web site. Where is the brokerage name required on that site?

Answer: License law requires the brokerage name be included on every "page" of the web site. A page is defined as one that may or may not scroll beyond the borders of the screen.

Question 19: The brokerage name is on every page of my agent's web site. Can the agent's name be more prominent than that of the brokerage?

Answer: No. Ohio license law prohibits an agent's name from being more prominent than that of a broker in any type of advertising. This requirement applies to the Internet as well as to yard signs, newspaper ads, fliers, etc.

Question 20: On my web site I have a section that includes my listings. Depending on the number of listings, the user may have to "scroll" down the page several times. Does my brokerage name need to be on the screen as you scroll?

Answer: No. The provisions of the rule define a web page as one that may scroll beyond the borders of the screen. Therefore, it is sufficient to have the broker or brokerage name at the beginning of the page where you start displaying your listings, even though as you scroll down the page the broker's name goes off the screen.

Question 21: My brokerage name is displayed on a banner at the top of my web site so that it appears at all times. However, if someone prints out information about listings on my site, that banner is not included on the print out. Is that okay?

Answer: Yes. The Division has indicated that you will be considered in compliance with the advertising rule even though the brokerage name does not appear on "print outs."

Question 22: My web site includes links to the local Chamber of Commerce, a restaurant guide, area maps, etc. Do these pages need to include the brokerage name?

Answer: No. This requirement only applies to those pages of your web site that involve the advertising of real estate services, such as listings of properties or agent profile pages. It would not apply to the links you have described since they do not involve real estate services.

Question 23: How often must outdated or expired information be updated on my web site?

Answer: License law requires that outdated or expired information be updated within 14 days.

Question 24: What happens if the company I use to maintain my web site doesn't delete or update the information within 14 days?

Answer: License law clearly states that if you use a third party to maintain your site, it is your responsibility to notify that company in a timely manner so that the 14 day time frame can be met. It also requires you to notify this third party company in writing of such changes--either by mail, fax or electronic means. As long as you can show that you provided timely written notice to your third party company you will not be in violation of this rule, even if the webmaster failed to effect the change within 14 days. The key is to make sure you don't wait until the 11th or 12th day to notify your webmaster of necessary changes. Instead, do it right away, do it in writing and keep a copy of that dated notification.

Question 25: License law requires licensees to indicate on their web site the date on which the information was last updated. Does this mean I need to include a "last updated" field for every piece of information on my web site, or can I just include a general statement that it is updated daily or weekly?

Answer: The rule does not go so far as to require a "change" date for each piece of information. Instead, you only need one place to indicate the date on which any information included on the site was changed. However, a general statement that the site is updated daily, weekly, etc. is not sufficient, according to the Division. Instead, the actual date a change was made must be indicated.

Question 26: Can I advertise property listed with another brokerage?

Answer: Yes. License law provides that to advertise property not listed with your brokerage that you have the written consent of the owner or the owner's authorized agent and that the advertisement includes the listing broker's name.

Question 27: Can I advertise FSBO property?

Answer: To advertise FSBO property you would need the owner's written consent to the advertising and include in the ad that it is FSBO or unlisted.

Question 28: I want to send out a newsletter to the area I "farm" that includes a list of properties that are currently on the market in that neighborhood. I have some of those properties listed, but several are listed with other brokers. Am I required to obtain consent from the other listing brokers for this type of marketing piece?

Answer: Yes. In order to advertise another broker's listings you must first obtain written consent from the "owner" or the "owner's authorized agent." On property that is exclusively listed with another broker, the listing broker or agent would be considered the owner's authorized agent. Therefore you would need written consent from the listing broker or agent to include their listings in your newsletter. Moreover, if consent is given, you must also include the listing broker's name in the newsletter.

Question 29: Can the consent be obtained from the listing agent, or does it have to come from the agent's broker?

Answer: The rule states that you must have the consent of the owner or his "authorized agent." That could be either the listing broker or the listing agent.

Question 30: Does the rule specify the manner in which I must display the name of the listing broker?

Answer: Yes. You must use a type size that is the same as, or larger than, the type size used to describe the property.

Question 31: Could I go around the listing broker and agent and get consent from the owner directly?

Answer: While license law would not prohibit this, the REALTOR Code of Ethics provides that REALTORS cannot take any action that is inconsistent with the exclusive agency relationship another REALTOR has with his/her client. Standard of Practice 16-13 further clarifies that "all dealings" concerning a property that is exclusively listed must be carried on with the client's agent or broker. Therefore, your ethical obligations as a REALTOR would preclude you from contacting the owner rather than the listing agent or broker.

Question 32: If my buyer requests that I send him a list of the 4-bedroom properties available in the area, do I have to include the listing broker's name on the properties my brokerage does not have listed?

Answer: No. Providing the requested information to your buyer would not be considered advertising. Ohio Administrative Rule 1301:5-1-02 (I) provides that the term advertising does not include a private communication between a licensee and a client, customer or prospective client provided the communication is initiated at the request of the client, customer or prospective client.

Question 33: Must a brokerage's telephone number appear on all signs and ads?

Answer: While the license law does require a broker's name to appear in any ad, including yard signs, it does not require that their phone number be included. Therefore, a salesperson's direct line or home phone could be the only telephone number that appears if the broker chooses to allow this. Licensees should be cautioned, however, that their home could be viewed as a branch office--and thus need to be licensed--if calls are exclusively directed there.

Question 34: Can I use a telemarketing firm to do "cold calling" or to canvas an area for prospects/listings?

Answer: A real estate license is required of anyone who assists or directs in the procuring of prospects for the sale of real estate. Whether unlicensed telemarketers can be used depends upon the content of their presentation. There is a very fine line where a telemarketer's conduct can cross over into activity that requires a license. Therefore the Division has taken the position that the inquiry should be limited to scheduling an appointment for a licensed agent or broker to meet with the prospect. The telemarketer should definitely NOT solicit information regarding a prospect's home buying or home selling needs, provide information regarding any properties that are on the market, discuss brokerage services or commission rates, etc.

Question 35: Three of my agents have formed a team called The Smith Team. Can they advertise in just the team name or do they need to include their individual names, along with the team name in the ad?

Answer: At least one agent's name must appear in the ad with the team name. It is not necessary to include the names of the other two agents in the team.

Question 36: I have a team of three agents. I use my full name in the team name (The Jane Smith Group). Does this meet the license law requirement of having at least one licensee's name in team advertising?

Answer: Yes. As the team name includes the full name of a licensee as it appears on her license the requirement is met.

Question 37: Must team advertising include the name of the brokerage the team members are licensed with?

Answer: Yes. License law requires the brokerage name in all team advertising.

Question 38: Can the team name be more prominent than the brokerage name?

Answer: No. Neither the team name nor the name of the licensee(s) affiliated with that team can be more prominent than the brokerage name.

Question 39: Must an unlicensed team member be identified as unlicensed if their name is included in the advertising?

Answer: Yes.

Question 40: A team in my office wants to include a team photo in their advertising. Must every person in the photo be identified in the ad?

Answer: No. As long as the team advertising rule requirements are met--at least one licensed team member's name is included in the ad, the brokerage name is included and the brokerage name is at least equal in prominence to that of the team name and agent's name--it is not necessary to identify every person in the photo.