



PROMOTING PROPERTY PROPERLY

A PRIMER ON REAL ESTATE ADVERTISING RULES IN GEORGIA

A REALTOR® took her “For Sale” sign down 12 days after the termination of the listing agreement. The seller did not think that the REALTOR® acted quickly enough (mostly because the REALTOR® did not find a buyer for the house) and the seller filed a complaint with the Georgia Real Estate Commission (GREC). Since the sign was not taken down within 10 days of the termination of the listing as required under license law, the REALTOR® received a citation for \$600.00. Since the licensee could either pay the citation (which if paid, is not a part of the licensee’s permanent record of discipline) or challenge the fine and risk a formal sanction that would be a permanent black mark on the licensee’s record, the licensee paid the fine.

REALTOR® B’s name on her “For Sale” sign was the same size as the name of her brokerage company. Unfortunately, her name was in a font that was bolder than that of the brokerage company. An agent in another company didn’t much like REALTOR® B and felt she had been acting too big for her britches for a long time. The agent filed a complaint against REALTOR® B with GREC, which again issued a citation for \$600 against REALTOR® B. When REALTOR® B asked who had filed the complaint, GREC refused to give out this information, explaining correctly that under Georgia law, the party about whom the complaint was filed is not entitled to this information unless and until the case is scheduled for an administrative hearing.

Both of these examples underscore the risks of making small mistakes in advertising. Larger mistakes in the advertising realm can result in more extreme sanctions. This article will explain the risks REALTORS® face in advertising and how best to avoid the risks in this area.

ADVERTISING IS DEFINED VERY BROADLY UNDER THE GREC’S RULES

The rules of GREC apply to virtually every type of advertising that might be conducted by a licensee. Specifically, the rules apply to print, photographs, broadcasts and computer media. Advertising in newspapers, mag-

azines, flyers, posters, business cards, billboards, radio, television, signs (including for sales, for lease and directional signs) newsletters and the internet are all covered under license law and the GREC regulations.

DISCRIMINATORY ADVERTISING IS PROHIBITED

A real estate licensee is prohibited from advertising a property where the “advertisement is directed at or referred to persons of a particular race, color, religion, sex, handicap, familial status or national origin”. Sub. Reg. 520-1-.09(4). The regulations then additionally provide that contents of any advertisement must be confined to information relative to the property itself and any advertisement that is directed at or referred to persons of any particular race, color, religion, sex, handicap, familial status or national origin is prohibited.” Sub. Reg. 520-1-.09(4).

This prohibition is very broad and creates significant risk to REALTORS®. Let’s look at the examples below to better understand why this is the case.

EXAMPLE #1: REALTOR® A advertises a property as being perfect for families with children. Has REALTOR® A violated the above prohibition against discriminatory advertising?

ANSWER: The answer to this question is quite probably yes. This is because the advertisement is directed to persons of a particular familial status (*i.e.*, families with children). Therefore, it would appear that this innocent advertisement could result in the REALTOR® being sanctioned for violating the rules of the GREC.

EXAMPLE #2: REALTOR® B puts an advertisement in the newspaper advertising a new subdivision for sale. A picture is included in the advertisement of a white couple looking lovingly at the house. Does this advertisement violate license law?

exception for over 55 communities which by definition discriminate against families with children but do so legally based on an exception to our fair housing laws. However, since this section of license law prohibits all advertising directed to people based on familial status and does not create an exception for over 55 communities, it arguably prohibits licensees from advertising any over 55 communities. This was not likely what GREC intended in drafting its regulations. Hopefully, GREC will revise its regulations to make them more consistent with our fair housing laws. Unfortunately, until this occurs, licensees are at risk if they do not comply with the present regulations.

[1] THERE IS A DIFFERENCE IN HOW REALTORS® ADVERTISE THEIR PROPERTIES VERSUS THEMSELVES

Many of the GREC restrictions on advertising only apply when a licensee is advertising a specific property or properties for sale or for lease and not to when the licensee is advertising himself or herself. So, for example, if a REALTOR® advertises in a local newspaper or church bulletin (without reference to any specific properties for sale or for lease), the name of the licensee can be larger than the name of the licensee's brokerage firm. Similarly, the licensee can choose to put only her telephone number in the advertisement and not the telephone number of the licensee's broker. However, the rules change once the licensee begins to advertise a property or properties.

IN THAT CASE THE ADVERTISEMENT MUST INCLUDE:

- (A) the name of the brokerage firm listing the property; and
- (B) the telephone number of the firm (at which the broker or the manager can be reached)

IN ADDITION, THE FOLLOWING RULES APPLY:

- (C) the name of the brokerage firm listing the property must appear in equal or greater size, prominence and frequency than the names of any affiliated licensee(s) selling or leasing the property; and
- (D) the firm's telephone number must appear in equal or greater size, prominence and frequency than the telephone number of any affiliated licensee or licensees selling or leasing the property.

Whether the size and frequency of a licensee's name is greater than the size and frequency of the name of the brokerage firm is easy to objectively evaluate. So, for example, if the licensee's name appears three times on an advertisement for a property and the company's name appears only two times, a violation of license law has occurred. There is an exception to this regulation for block advertising of multiple properties which will be discussed later in this article.

Things can get a little trickier with telephone numbers. Let's say, for example, that a real estate "For Sale" sign includes the broker's telephone number and the agent's cell and home numbers. Would putting one broker telephone number and two different telephone numbers of the licensee on the sign violate the GREC regulations? The answer to this question is yes since the frequency of the licensee's telephone numbers exceed the frequency of the broker's telephone number.

The requirement that the brokerage firm name and telephone number be at least as prominent as the licensee's name and telephone number is an even harder evaluation since reasonable people can have different opinions on what is or is not prominent. Since the standard being used by GREC is somewhat subjective, it would be hoped that GREC would only find violations in extreme circumstances where the question of whether the licensee's name or telephone number is more prominent than that of the broker is undisputed. So, for example, let's say that the name of the brokerage firm and the licensee are the same size and in the same font but the licensee's name is in red with all other writings in advertisement in black. Moreover, on either side of the licensee's name are two big red arrows pointing to the licensee's name. This would be a fairly clear example of a situation where the licensee's name is more prominent. However, let's say that the name of the licensee is on the top half of the advertisement and the broker's name is on the bottom half of the advertisement. Is the name of the licensee more prominent in this situation merely because of its location on the advertisement? What if the licensee's name is the same size and font as the broker's name but the licensee has a much longer name than the name of the brokerage firm? Could it be argued that the discrepancy in the length of the two names makes one more prominent? What if a slogan, such as "The only REALTOR® you will ever need" always appears after the licensee's name? If the size and font of the broker's name and the licensee's name are the same, does the inclusion of the slogan after the licensee's name make that name more prominent? What if the size and font of the telephone numbers of the broker and the licensee are the same but the licensee's telephone number spells "sell home". Does that make the agent's telephone number more prominent than the broker's phone number? All of these questions can be legitimately debated. Therefore, REALTORS® must be cautious to avoid an inadvertent violation in this area.

BLOCK ADVERTISEMENTS HAVE THEIR OWN SPECIAL RULES

Advertisements with multiple listings on it (such as an entire page of a magazine or newsletter) have their own special rules. If the name of the brokerage firm ap-

appears only once at the top of the advertisement in equal or greater prominence and print size than any of the listing agent's names appearing on the page, there is no violation of the GREC rules. This is the case even if a licensee's name appears three times on the page (because the licensee has three listings being advertised on the page) and the broker's name appears only once.

NAMES MUST BE USED CORRECTLY IN ADVERTISING

Unless a brokerage firm has registered a trade name with GREC, the brokerage company must advertise using its proper legal name as registered with the Commission. So, for example, if a brokerage firm's legal name is "Smith & Jones Real Estate Brokerage Company of Georgia, LLC", that would normally need to be the name of the company that appears on the company's "For Sale" signs and other advertisements. The exception to the rule is if the company has registered a trade name with the GREC. So, for example, if the company wants to use an abbreviation of its name on its sign, such as "Smith & Jones Realty", the brokerage firm would need to register this as a trade name with GREC. Only then will a real estate brokerage firm using the abbreviated name be in compliance with GREC.

It should be noted that while registering a trade name with GREC will ensure compliance with license law, under state law companies using trade names must also file a trade name registration in each county in which the company does business. The registration statement must be filed in the office of the Clerk of Superior Court and notice of such filing must also be published in the legal organ of the county once a week for two weeks. (See, O.C.G.A. § 10-1-493). While such registrations will bring the applicant into compliance with Georgia law, it is not a guarantee that there may not be a challenge to the use of the name if it is confusingly similar to a trade name or company name already being used elsewhere.

As noted above, the GREC also require all advertising to be in the name of the broker who holds the licensee's license. So, what does this mean? At a minimum, it means that a licensee cannot just use their own name in advertising property or themselves. So, for example, let's say that "The Smith Team," which is affiliated with Quicksales Realty Company, advertises its services on the internet. No mention is made of specific properties. Does The Smith Team have to mention that it is affiliated with the Quicksales Realty Company? The answer to this question is yes since The Smith Team needs to be advertising in the name of the broker.

BROKER MUST SUPERVISE ADVERTISING

All advertising by associate brokers, real estate sales-

persons and community association managers must be under the direct supervision and in the name of the broker who holds their licenses.

What should the broker be looking for in reviewing advertising? The regulations of the GREC require that the advertising be reviewed for compliance with the license law and the rules and regulations of GREC. This means that the broker should confirm that the advertising: (a) is not false or misleading; (b) does not violate any fair housing laws; and (c) complies with the technical rules and regulations of GREC.

GREC's rules require the broker to review all advertising but do not state when the advertising must be reviewed. This is unlike real estate contracts where the broker has 30 days from the date of the offer or contract to review the offer or contract. Since no grace period is given with respect to the review of advertising, it is unclear whether the advertising must be reviewed before it is placed in a newspaper, magazine, website, or other media outlet. With such uncertainty, the safest approach is to review all advertising before it is released to the public.

LICENSEES MUST BE DOUBLY CAREFUL IN ADVERTISING THEIR OWN PROPERTIES

Special rules exist for when a licensee is advertising

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his or her own property for sale or for lease. First, the licensee may not buy, lease or sell property without first notifying his or her broker in writing. The broker must give his or her written consent to advertising the specific property and the advertisement itself. Second, license law prohibits a licensee from advertising in a manner indicating that the offer to sell, buy or lease property is being made by a private person not licensed with GREC. Any advertisement must include either: (a) the legend "seller, buyer, landlord, tenant [select appropriate name] holds a real estate license; or (b) the legend "Georgia Real Estate License # [insert licensee's six digit number]" (for example, 000001), "Georgia Real Estate License may be abbreviated to "GA R.E. Lic., 000001".

In other words, not only are there special requirements for when the licensee is acting as a principal in buying, selling or leasing property for their own account, there are also special requirements for advertising the sale or lease of the licensee's own property.

REALTORS® SHOULD AVOID ADVERTISEMENTS THAT ARE INACCURATE OR MISLEADING

GREC rules prohibit advertising that "is misleading or inaccurate in any material fact or in any or in any way misrepresents any property, term, values, services or policies". (Sub. Reg. 520-1-.09(2)). This means that licensees can be sanctioned for misleading others about their properties, themselves, or the services they provide.

What constitutes a misleading advertisement can also be a matter of debate. For example, let's say that a property is in terrible condition and is in need of either being torn down or completely gutted. While describing such a property as a "fixer upper" or a "handyman's special" may be a bit of an understatement, it will not likely get the licensee into trouble with the GREC. Some degree of creative advertising or "puffery" has always been a part of selling real estate. However, at the other end of the spectrum, outright lying will always get the licensee into serious trouble.

The most common complaints about misleading advertisements include: a) allegedly untrue statements about the brokerage firm such as "we are the number one brokerage firm in town" without any explanation of whether this is a reference to total sales, gross commission dollars or customer satisfaction or the owner's opinion of his or her company; b) untrue statements about a licensee such as "Million Dollar club member for the last 10 years" when in fact that is not the case, or untrue statements about the property; and c) about the services provided by the licensee. It is not uncommon for brokerage firms with unusual business models to be accused of advertising in a misleading way. So, for example, if a listing broker guar-

antees to buy the property if it does not sell it, expect complaints of misleading advertisements unless the terms and limitations on the "guaranteed purchase" are clearly explained to consumers.

The term "misleading" is defined in the dictionary as "giving the wrong idea or impression". It does not require an outright lie. REALTORS® and their brokers reviewing advertisements should both keep the definition in mind when preparing advertisements. One way for REALTORS® to avoid claims that an advertisement is misleading is to have the client for whom the advertisement was prepared approve the advertisement in writing. A statement signed by the client like "Approved for accuracy and content" can go a long way to prevent the seller from giving the REALTOR® false information and then blaming the REALTOR® when the advertisement turns out to be inaccurate.

PERMISSION IS NEEDED TO ADVERTISE A PROPERTY FOR SALE OR FOR LEASE

License law in Georgia specifically prohibits a licensee from placing a sign on any property offering it for sale or rent without the written consent of the owner or the owner's authorized agent. (O.C.G.A. § 43-40-25(b)(ii)). Therefore, no "For Sale" or "For Lease" sign should be placed on a property until the seller has signed a listing agreement or some other written document authorizing the placement of the sign on the property.

GREC has informally indicated that the "Coming Soon" sign cannot be placed on a property without written approval of the owner since it is seen as a type of "For Sale" sign. The GREC rules also provide that a licensee shall not advertise a property for sale or lease unless the licensee "has first secured the written permission of the owner or the owner's authorized agent". This means that no marketing materials advertising a property for sale or for lease can be distributed without first obtaining written approval of the owner. Once a listing agreement ends, the "For Sale" or "For Lease" sign must be removed from the property within ten days after the expiration of the listing. Advertising on the internet must similarly be removed. Some REALTORS® have complained that they don't know how to remove advertising from the internet. To avoid being sanctioned, it is recommended that no advertisement be placed on the internet except for ones that the REALTOR® knows how to remove.

Advertising is an area where not knowing the law can be costly. Hopefully, this primer will help REALTORS® better understand their obligations in this area.

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