



Professional Practices

Lesson 25

Advertising Rules and Regulations - How They Relate to Team Advertising

45 Hour Louisiana Post-Licensing

LAWS AND RULES PART I

Introduction

The Louisiana Real Estate Commission is charged with protecting the public.

All of the advertising rules and regulations are meant to prevent confusion on the part of the public. These rules and laws are not meant to make the agents' lives easier but to ensure confidence in the public that all advertising made by licensees is true and accurate and in accordance with the laws and rules and regulations of the Louisiana Real Estate Commission.

A Good Week For...

Calling the boss a jerk, after the National Labor Relations Board ruled that workers can't be fired for complaining about their jobs on Facebook and other social-networking websites.

The USA, after an international poll by social-networking sites Badoo.com found that Americans are the world's "coolest nationality". Because of perceptions of widespread anti-Americanism, said a Badoo spokesman, "we sometimes forget how many people across the world consider Americans seriously cool".

The future of civilization, after London's Science Museum asked 3,000 adults to name what they couldn't live without. Facebook came in fifth, ahead of flushing toilets, showers, and fresh vegetables.

The Week, September 23, 2011

LSA – R. S. 37: 1455. Causes for censure, suspension, or revocation of license, registration, or certification

- A. The commission may censure a licensee, registrant, or certificate holder or conditionally or unconditionally suspend or revoke any license, registration, or certificate issued under this Chapter, levy fines or impose civil penalties not to exceed five thousand dollars, or impose continuing education requirements on licensees, registrants, or certificate holders if, in the opinion of the commission, a licensee, registrant, or certificate holder is performing or attempting to perform or has performed or has attempted to perform any of the following acts:
- (12) Offering real estate for sale or lease on terms other than those authorized by the owner or his authorized agent.
 - (35) Using advertising that is misleading or inaccurate.

Use of MLS is Not Considered Advertising

Chapter 25. Advertising; Disclosures; Representations

§2501. Disclosures and Representations

- A. Agreements between brokers to allow property data to be shared and disseminated to clients, customers, or prospective clients, including but not limited to web-based or email multiple listing service property data, IDX or VOW property data does not constitute advertising or advertisement as to the property data shared.

Discussion:

- *Information listed with MLS is not considered advertising under the Rules & Regulations because this information should be accessible only through the broker's website where all the required information should appear.*
- *The Louisiana Real Estate Commission has received complaints alleging that a licensee has breached the "broker agreement" regarding how data is shared; however, this would not be within the jurisdiction of the Louisiana Real Estate Commission. Some Realtor Boards allow information to be printed and some do not. This is a Board issue.*

Advertising Must Be Under Direct Supervision of Broker

- B. All advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership, and any advertising for property listed by or services performed by a licensed individual real estate broker or a licensed corporation, limited liability company, or partnership by sponsored licensees or employees, shall be under the direct supervision of and approved by the licensed individual real estate broker or designated qualifying broker of the licensed corporation, limited liability company, or partnership.

Discussion:

- *Louisiana Real Estate Commission Staff Policy - Each licensee is responsible for compliance. The fine for a first offense is \$75, second offense is \$150, and for a third offense the qualifying broker will be charged and both must appear at a formal hearing before the Commissioners. The Louisiana Real Estate Commission will verify that the qualifying broker has procedures in place to supervise and approve agents' advertisements.*

Trade Names

- C. Any trade name used by a licensee, registrant or certificate holder in advertising shall be a trade name that is a clearly identifiable entity that will distinguish itself from other licensees, registrants or certificate holders.
- D. All advertising by a licensed salesperson, associate broker, individual real estate broker, or licensed corporation, limited liability company, or partnership shall include their business name, which for the purpose of these rules shall mean the name in which that salesperson, associate broker, individual real estate broker, or licensed corporation, limited liability company, or partnership is on record with the commission as doing business as a licensee of the commission or, in the case of a trade name, that which is registered with the Secretary of State and on record with the Commission.

Discussion:

- *If you open a real estate brokerage that has a name other than the name of the sponsoring broker, you must have a separate license and separate Errors and Omissions insurance for that brokerage.*
- *You must not abbreviate or omit - names should be exact. (Must include Inc., or LLC) unless company has registered a second trade name as in Baker & Co. rather than Baker and Company, etc.*
- *If you choose to use an abbreviated name, it must be registered as a trade name.*
- *An “individual real estate broker” license can be issued in the name of the sponsoring broker and can have a trade name registered to that license. They are operating as a sole proprietorship with or without a trade name.*
- *If they are operating as a separate corporation, LLC, partnership with a tax id number, they will have a trade name = PAPER ENTITY.*
- *Each separate license (individual, associate broker, salesperson, and corporation) must carry its own Errors and Omissions insurance.*

Team Names

- E. A group or team name may be used in an advertisement only with the approval of the sponsoring broker. Any person listed as a group or team member in the advertisement must be a licensee sponsored by the sponsoring broker.

Discussion:

- *A group or team name being used must have the approval of the sponsoring broker.*
- *§1431: Definitions, “Real Estate Activity” (e): According to the license law you may not advertise that you are in the business of real estate without holding a valid real estate license. Therefore, members of a team who are not licensed by that particular sponsoring broker, or are unlicensed, cannot be in the advertisement.*

What's wrong with the ad?



- All members not licensed
- First and last names not listed
- Name of broker not listed
- Broker's phone number not listed

The chief investigator for the Louisiana Real Estate Commission suggests experience years be listed separately.

- Must use first and last name in ad
- Both members have to be licensed by same broker
- Cannot have team name that is confusing between team and brokerage company

F. In all advertising, the salesperson or associate broker must include the name and telephone number of the sponsoring broker. The broker's name and telephone number must be conspicuous, discernible, and easily recognized by the public.

Definintions

Advertising:

- The action of calling something to the attention of the public, especially by paid announcements
- A form of communication used to persuade an audience to take some action with respect to products, services, or ideas
- The activity of attracting public attention to a product or business, as by paid announcements in the print, broadcast, or electronic media
- Social network advertising is a term that is used to describe a form of online advertising that focuses on social networking sites. One of the major benefits of advertising on a social networking site is that advertisers can take advantage of the user's demographic information and target their ads appropriately.

Discernible:

- Perceptible, as by the faculty of vision or intellect
- Able to be detected by the eyes or other senses

The philosophy of the Commission and the measuring stick they will use in enforcing the rule requiring wording be discernible, is that they want and are interested in being able to see the broker's name and telephone number as easily as the agent's name and telephone number.

Conspicuous:

- Easy to notice
- Obvious
- Attracting attention

Discussion:

- *The broker's name and telephone number must be discernible. Even though it doesn't specify "telephone number" under "Internet Advertising, §2501-F", make it clear that the phone number should be there.*
- *Direct lines and phone numbers owned by the brokerage company that by-pass the brokerage's main line and go directly to the agent are considered to violate the spirit of the Rule. What the Commission wants is for the public to be able to call the telephone number in the ad and get in touch with the broker or branch supervisor if they so desire.*

What's wrong with this name?

The full name "Century 21 Stafford's Extraordinary Group" should be conspicuous, discernable, and easily identifiable by the public. This is called "disappearing ink" by the investigators at the Louisiana Real Estate Commission.

QUESTION and ANSWER

Q. When representing my brokerage's name, do we need the broker's telephone number on the sign placed on our office?

A. No, an office sign is not considered to be an advertisement. It is considered to be a "locator".

G. *If allowed by the sponsoring broker, the salesperson or associate broker may include in the advertisement:*

- 1. The salesperson's or associate broker's personal logo or insignia, which cannot be construed as that of a company name, and which must include the name and telephone number of the sponsoring broker;*
- 2. The salesperson's or associate broker's contact information;*
- 3. A group or team name, as long as the name(s) of the salesperson(s) and/or associate broker(s) are included near the team reference and cannot be construed as that of a company name; and*
- 4. A slogan that may not be construed as that of a company name.*

Discussion:

- *One of many reasons for this rule, other than not to confuse the public, is to prohibit a team from appearing to be a brokerage company.*

Advertising and the Brokerage

Real estate advertising typically falls into one of two main categories:

1. The first category includes advertising the services offered by the licensee. The purpose is to draw the attention of potential clients to these services and not to a specific property for sale or lease. Examples of this type of advertising are those television or radio ads extolling the merits of a licensee or a brokerage.
2. The second category concerns brokerage transactions and includes advertising real estate. This type of advertising is done in newspapers and trade publications, on specialized television networks, on listing-cut sheets, and on the Web. The purpose is to advertise one or more properties for sale or lease.

To advertise brokerage transactions, the Louisiana Rules and Regulations require brokers and salespeople to have the seller's or lessor's written permission to advertise the property. In practice, this means that a licensee can advertise a property for sale or lease only if they have a brokerage contract authorizing them to do so.

Caution must be used when a listing brokerage authorizes another brokerage or salesperson to advertise a property. If you want to advertise another brokerage's listing, you must obtain the permission of the owner and the listing broker.

One way to ensure whose listings are whose is to create two links for listings, one titled "My Listings" and one titled "Other listings" with each link taking you to a separate and correspondingly titled Web page.

When advertising completed transactions make sure your information is not misleading or false in nature.

Suggestions for Good Advertising

- Create relevant and specific ads
- Target the right audience
- Set a daily advertising budget
- Keep it short and simple
- Keep it engaging
- Include a call to action

Keep Information on Web Sites Current

Make sure not only your name and number, but your broker's name and number, are on all forms of communication and on every webpage.

The Broker Is Ultimately Responsible!

Brokers must take all reasonable means to make sure that the licensees they sponsor comply with the provisions of the Louisiana Real Estate License Law and Commission Rules and Regulations. Brokers must therefore ensure that their own advertising, and any advertising done on their behalf by their salespeople, is consistent with the rules.

Business Names

A broker selecting a brokerage name must keep a few practical aspects in mind.

The Commission recommends that you choose a name that is not too long, because under the Louisiana Real Estate Commission Rules, all advertising must include the full name of the brokerage as it appears on the brokerage license.

The broker and their salespeople must include the brokerage name in all advertising and cannot use a short form even if, under certain circumstances, it would seem desirable to do so.

Names on Licenses

The Louisiana Real Estate Commission will be taking a hard look at licensee advertising, so please act promptly to resolve any issues related to the name that you use in your advertising and marketing campaigns, or any other real estate license activity. Below are some of the more frequently asked questions regarding names on licenses:

QUESTIONS and ANSWERS

Q: My registered legal name on my real estate license is Arnett Bob Brown. Must I use my middle name in real estate advertisements?

A: No, you do not have to use your middle name, but you must use first and last name unless you have a filed a DBA with the Commission to use Bob Brown. Then I would be able to use either Arnett Brown, Arnett Bob Brown, or Bob Brown.

Q: My legal name is John Jacob Doe, but I am known as “Jack” to my friends, family and business clients. What must I do to be in compliance when advertising?

A: Your legal name must be registered with the Commission, as well as your DBA/Nick Name, Jack Doe. You may advertise as John Doe, John Jacob Doe, or Jack Doe. You are not required to use your middle name in advertisements, but your last name must always be included.

Q: My legal name is Mary Alice Smith, but I am known by my middle name, Alice, to friends, family and business clients. My legal name is registered with the commission, but I want to advertise as Alice Smith. What must I do to be in compliance when advertising?

A: You should register Alice Smith as a DBA/Nick Name.

LAWS AND RULES PART II

§2503. Owner Authorization

A. No broker or licensee sponsored by said broker shall in any way advertise property belonging to other persons as being for sale or rent or place a sign on any such property offering the property for sale or rent without first obtaining the written authorization to do so by all owners of the property or their authorized attorney in fact.

Discussion:

- “Attorney in fact” means the person holding power of attorney. This is often used when family members or multiple persons own the property. It is much easier for the licensee to obtain signatures on documents when dealing with just one person who holds a power of attorney for the other family members. §2503 is also an area in which the licensee should have a basic knowledge of inheritance laws.
- An executrix or executor cannot sign a contract on behalf of the heirs unless they have a power of attorney. The Louisiana Real Estate Commission has received complaints about these parties signing the listing agreement instead of the rightful heirs.

Inheritance Laws in Louisiana

Louisiana, being the only Civil Law state in the union, and only forced heirship state, is unique in its inheritance laws which strive to be fair and equitable to both the surviving spouse and the children of the deceased. Complete and perfect ownership includes three sticks in the bundle of rights:

1. Abusus (title to the property)
2. Usus (the use of the property)
3. Fructus (the fruits or revenue from the property)

Community property is what is owned by the marriage. Separate property is what you owned prior to marriage and/or things acquired during the marriage, but not by the marriage, for example, inherited property. Keep in mind that even though you acquired something prior to marriage, but you paid for some or all of it out of community funds, it could make it whole or partially community property. For example, if you bought a house two months before marriage, but paid the house note out of community funds or a joint checking account, the house may now be community property. Remember, it only takes one signature to acquire community property, but it takes two signatures to sell it.

The Louisiana Real Estate Commission has received complaints concerning a listing agent who allowed an “almost” ex-husband to sign as sole owner on the listing and purchase agreements on a community property home. The divorce was not final, but the ex-husband told the licensee that he was the only owner of the property. When the wife called the licensee to complain, the licensee did not remove the listing from his website or from MLS.

Community Property

If Mr. Brown should die today intestate (with no will), and is survived by his wife and three children, his half of the community property would go to his three children. His widow would retain her half of the community property. The children would receive abusus or the title to their half of the property, with the state of Louisiana giving usus and fructus to the surviving spouse until death or remarriage. If you combine the words usus and fructus, we now have a new word “usufruct” which is a personal servitude over the half of the property belonging to the children. Upon listing this house you would need to account for four signatures - the widow and the three children because there are four owners of this house. The separate property owned by the deceased Mr. Brown would go to his three children, and they would have abusus, usus, and fructus of this property. The widow would have no interest in the separate property as Mr. Brown died intestate.

If Mr. Brown died testate, the signatures needed would depend upon the ages of his children and/or what is stated in the will. If your child is no longer 23 years of age or younger, then he or she is not a forced heir and does not have to be included in the will, unless the child is physically or mentally handicapped. If handicapped, there is no age restriction.

Forced Portion or Legitime:

The forced portion of the property of the decedent is the portion that his forced heirs must receive upon his death. The balance of the decedent’s estate is called the disposable portion.

Disposable Portion:

The disposable portion is three-fourths if the decedent leaves one heir at his death and one-half if the decedent leaves two or more forced heirs.

Forced Heirs:

Forced heirs are the children of the decedent who at the time of the death of the decedent are:

- 23 years of age or younger
- Any age, but because of some mental incapacity or physical infirmity are permanently incapable of taking care of their persons or managing their property

Disinherison:

There are specific reasons for which a parent may disinherit a forced heir but they are seldom used.

When it comes to record of title, the real estate agent can rely upon what is told to him or her by the so-called owner, but in cases of death or divorce, the agent should be prompted to inquire further as to legal ownership. Searching the courthouse records has been ruled by some courts as being out of the area of expertise for licensees, but death, separation, or divorce should raise red flags and invite inquiry. Divorce does not always include a property settlement.

Remember, if the couple is separated, signatures of both husband and wife must be on the listing agreement unless one holds a power of attorney for the other.

Remember, the law does not make an exception just because the property is owned by several family members some of whom are out of state making it difficult for the licensee to obtain their signatures.

B. Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

Discussion:

- This has not always been the case. Just in the last few years this rule was added to stipulate that partial interest owners could sell their interest without involving the other owners. The percentage being sold should be stated in the advertisement; however, this is not specifically required in the laws or rules.
 - **The law: 37:1455.A. (11):** Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.
 - **The rule: 2503:B.** Undivided real estate may be offered for sale or lease with the written consent of the owner of the property to be sold or leased as to his undivided portion of the property.

Truth in Advertising

False/Deceptive Advertising

False advertising or deceptive advertising is the use of false or misleading statements in advertising. As advertising has the potential to persuade people into commercial transactions that they might otherwise avoid, many governments around the world use regulations to control false, deceptive or misleading advertising.

Truth

Truth refers to essentially the same concept, that customers have the right to know what they are buying, and that all necessary information should be on the label.

Advertising

Advertising plays a key role in the real estate industry because it influences the purchasing decisions of the consumer. Truthful advertising benefits the consumer and enhances the image of the industry.

Conversely, misleading advertising can negatively affect consumers, licensee's business and the integrity of the real estate industry.

§2505. Accuracy in Advertising

A. All advertising shall be an accurate representation of the property advertised. No broker or licensee sponsored by said broker shall use advertising which is misleading or inaccurate or in any way misrepresents any property, terms, value, policies, or services of the business conducted. The advertising shall not include any name or trade name of any franchiser or real estate organization or association of which the licensee is not a member or franchisee.

Discussion:

- The most common type of violation with real estate organizations or associations is claiming to be a REALTOR® when in fact they are not, or using the trademark R symbol. The acronym "TLC" sometimes is used in its broadest sense.

Other Common Errors:

- Listing total square footage as "living area" is misleading.
- Confusing arpent with acre is also misleading; 100 arpents equals about 85 acres. Arpent is NOT French for acre. An arpent is 192 ft. X 192 ft. An acre is 208.71 ft. X 208.71 ft.
- We have agents representing themselves using a team or group name although they have no team members! That would be misleading and inaccurate.
- Advertisements using only the first name.
- If a firm is affiliated with a franchise organization, all advertisements must disclose to the public that the firm is "independently owned and operated".

- Advertising “new air conditioner” when only the compressor has been replaced, not the coils, or vice versa.
- Advertising property as waterfront when there is a small man-made pond in the front yard.
- Advertising as a team but only the team leader is pictured and other team members are not listed or named. If you do not include team members you cannot advertise as a team.
- Advertising a water treatment as a pond. This actually happened according to the investigative staff, but the true nature was revealed in the summer after the sale.

QUESTION and ANSWER

- Q.** My signs do not include the disclosure that our office is “Independently Owned and Operated”. How can I get into compliance?
- A.** You can amend your current signs using stickers with the printed required disclosure.

§2507. Advertisements of Residential Property

All printed advertisements for the sale or lease of residential real estate shall indicate the month and year the advertisement is printed, published, or distributed. Advertisements printed or published in newspapers, real estate trade publications and commercial magazines and brochures bearing an issue or publication date will be considered in compliance with this Section.

Discussion:

- Flyers placed in a box by the “for sale” sign offering information about the listed property should also be dated with month and year that it was printed, published, or distributed. The reason advertising needs to be dated is to insure that the ad is in compliance with rules and regulations in effect at that time and to allow the public to know how old the information is. This includes flyers at open houses and/or “choose your neighbor” flyers and post cards.

QUESTION and ANSWER

- Q.** Is there a requirement to place the current date on printed flyers?
- A.** Dates are not required on newspapers, sales magazines, or other publications bearing issue number as these publications already include the date or volume number.

Franchises: You Ought to Know

§2509. Advertisements by Franchise Organizations

Any licensed broker or salesperson affiliated with a franchise organization must disclose to the public that the real estate brokerage firm is independently owned and operated in all advertising and on every page of the website.

The chief investigator for the Louisiana Real Estate Commission recommends that this information be included on the first or last page in all electronic communication.

It is recommended that the information be on the signature page which is the last page.

Discussion Question

Sally Salesperson is an agent for Western Realty, a franchise company mainly in the western United States licensed to do business in Louisiana, ran an ad in the newspaper featuring her highest priced listing.

Which of the following **MUST** be in the ad?

1	Broker's name	Yes	No
2	Broker's telephone number	Yes	No
3	Broker's street address	Yes	No
4	Sally Salesperson's name	Yes	No
5	Sally Salesperson's telephone number	Yes	No
6	Each office is independently owned and operated	Yes	No
7	This property is O/A	Yes	No
8	Price of property	Yes	No
9	Picture of property	Yes	No
10	Address of property	Yes	No

Answers:

Yes – 1,2,and 6;

No – 3,4,5,7,8,9,and 10

What is missing from the ad?



- Independently owned and operated
- No company telephone number
- No company name

Flyer in Yard Box:

\$350,000

For SALE

Exceptional Multi-Level Family Home

Single Family Property
Year Built: 2010
4 Total Bedroom(s)
2 Total Bath(s)
Approx. 3600 sq. ft.
Forced Air Heat
Air Conditioning
2 Car Garage
Composition Roof
Corner Lot
Approx. 1.2 acre(s)
Vaulted Ceilings
Hardwood Floors
Slate Entry
Fenced Backyard
Sunken Family Room
Landscape Garden
Fabulous City Views

5432 Any Street West, Townsville, State 54321

Real Estate Company

Please call to arrange a private viewing First M. Leverage, Sales Agent 555-543-5432 www.yourwebaddress.com

What is missing from this ad?

- No date (month and year) printed, published or distributed
- Doesn't say "independently owned and operated"

License Status; Internet Advertising; Team Advertising

§2511. Agent Owner-Licensed Agent

- A. A licensed broker or salesperson who offers property in which he or she owns any interest as being for sale or rent shall state in any advertising, and on any sign placed on the property, that he or she is a licensed real estate agent.
- B. Any licensed broker or salesperson that advertises, or offers to purchase or rent property for his or her own full or partial interest shall state in any advertisement that he or she is a licensed real estate agent.
- C. Including the term "licensed real estate agent" in any advertisement or on any sign shall be sufficient to satisfy this requirement.
- D. This Section is not applicable to the sale, rental, or acquisition of property by licensees under a contractual agreement with a licensed Louisiana real estate broker.

Discussion:

- The term "owner agent" is the most common way to disclose this even though the rule uses the term "licensed real estate agent". However, disclosure does not stop there: remember you must include in the lease and/or buy-sell agreement that you are a licensed real estate agent. That applies to an agent who is either a buyer or seller, lessor or lessee. It also applies when your license is inactive. Just because you have an inactive license doesn't mean you're exempt from knowledge of the rules. Your knowledge is not inactive!
- The executive director, Bruce Unangst of the Louisiana Real Estate Commission has ruled that the term "owner agent" is acceptable, but "O/A" is not.
- If you list your own property or use your real estate license to buy property through your broker, the term "owner agent" does not have to appear in any advertisements, but your broker's name and telephone number must be in the ad. It doesn't hurt to put "owner agent" on real estate company signs for listed property, but it is not required.
- If you act as a "for sale by owner" or lessor, lessee, or purchaser, you must include "licensed real estate agent" in the contract even if you are using a broker. You must also include the sexual predator website if the transaction involves residential property (4 plex or less).
- Remember, separate from advertising disclosure of owner/agent, you must disclose in writing that you are a licensee before entering into any real estate contract as a seller/buyer, lessee/lessor. Even if the principal has knowledge of your vocation ---you must put it in writing.

Discussion Question:

Broker Bob, a licensed real estate broker, ran an ad for a ranch he owns in “Ranches for the Rich, Edition XXVII”. He did not list the ranch with his company and elected to be a “for sale by owner”.

Which of the following must be in the ad?

1	Date the ad was published or distributed	Yes	No
2	Broker’s license number	Yes	No
3	Broker’s name	Yes	No
4	Broker’s telephone number	Yes	No
5	O/Agent	Yes	No
6	Address of brokerage office	Yes	No
7	Country in which main office is located	Yes	No
8	Owner/Agent	Yes	No

Answers:

Yes – 8;

No – 1,2,3,4,5,6, and 7

Advertising Without a Valid License

License Status and Advertising

What happens with advertisements following cancellation, abandonment, expiration or suspension of a licensee’s license?

Whether a suspension is voluntary or imposed, a licensee must cease all advertising. Advertising is considered trading in real estate and therefore, cannot be performed by any licensee without a valid license for someone other than advertising their own real estate.

A licensee who does not hold a valid license must:

- Cease all advertising in periodicals
- Cease all soliciting of clients by mail, e-mail or phone
- Remove any advertising sign or other advertisement
- Remove all road signs
- Cease all advertising on Web sites and Internet classifieds
- Notify local REALTOR® boards of which the person is a member, and remove any listing on MLS, and the broker must appoint a replacement
- Remove all billboards on thoroughfares and highways

- Remove all ads on company or personal vehicles
- Remove all signs on buses, public benches, in arenas or other public places.

This also applies to inactive licensees except when acting as a for sale by owner and not as a licensee, however on all advertising the inactive licensee must disclose that he is a licensee in buying, selling, leasing, and renting and must disclose that he is a licensed real estate agent in all Buy-Sell agreements and Lease Agreements, whether lessee or lessor.

§2515. Internet Advertising

- A. A real estate broker advertising or marketing on a site on the Internet must include the following data on each page of the site on which the advertisement appears:
1. the broker's name or trade name as registered with the commission;
 2. the city and state in which the broker's main office or branch office is located.

Discussion:

Under the new rules, the jurisdiction in which you are licensed, as well as country, are no longer required.

Even though it does not say “telephone number has to be included” in §2515, after discussion with the Louisiana Real Estate Commission, they are of the firm opinion that the telephone number must be included in all advertising as so stated in §2501-F: *“in all advertising the salesperson or associate broker must include the name and telephone number of the sponsoring broker”. The broker’s name and telephone number must be conspicuous, discernible and easily identifiable by the public.*

- B. A real estate broker using any Internet electronic communication for advertising or marketing, including but not limited to, e-mail, email discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:
1. the broker's name or trade name as registered with the commission;
 2. the city and state in which the broker's main office or branch office is located.

Discussion:

- Again, country has been eliminated as a requirement.
- This rule does not apply to websites but to electronic communication, so the requirement is either first or last page of all communications.

QUESTION and ANSWER

- Q.** What is required on websites such as www.realtor.com?
- A.** The Louisiana Real Estate Commission does not have jurisdiction over data shared via IDX, and there is no violation if you have no control over the site. However, if “enhancements” or promotional packages are purchased from realtor.com, Truila, or Zillow, all information must be included to avoid being charged with a violation.
- C.** An associate broker or salesperson advertising or marketing on a site on the Internet must include the following data on each page of the site on which the licensee's advertisement or information appears:
1. the associate broker's or salesperson's name;
 2. the name or trade name of the licensed broker or agency listed on the license of the salesperson or associate broker;
 3. the city and state in which the broker's main office or branch office is located.

Discussion:

- This requirement is the same as that for brokers except that you must remember to always include the broker's name or trade name as listed on your license. This information has to appear on each page of the site.
- D.** An associate broker or salesperson using any Internet electronic communication for advertising or marketing, included but not limited to, e-mail, email discussion groups, and bulletin boards, must include the following data on the first or last page of all communications:
1. the associate broker's or salesperson's name
 2. the name or trade name of the licensed broker or agency listed on the license of the salesperson or associate broker
 3. the city and state in which the broker's main office or branch office is located

Suggestion:

Include all information on signature page, including team name and first and last name of each team member, as per the chief investigator of the Louisiana Real Estate Commission.

Discussion:

- This requirement is also the same as for brokers except that the broker's name or trade name must appear as listed on your license. This information has to appear on the first or last page.

To Summarize

The following information must appear on first or last page for emails, and every page for Internet advertising:

- Name and telephone number of the brokerage firm
- City and state where office is located
- “Independently owned and operated” (if a franchise)
- If a team name is represented, it must include the first and last name of each team member
- All individuals who are listed as part of the team must be licensed and sponsored by that broker.
- Team names cannot be construed as that of a company name
- If names are included, first and last names must appear

Discussion Questions:

1. Sally Salesperson created her very own website. The new website must contain which of the following?
 - a. Broker’s name, city, state, and phone number on first or last page
 - b. Broker’s name, city, state, and phone number on each page
 - c. The term USA in the address
 - d. Sally’s name and phone number must be on each page.
 - e. Since it’s Sally’s own website she doesn’t need her broker’s name on her website.

Answer: b

2. Sally salesperson sent an email to her very best client showing a picture of a listing Sally has that she thought her client would be interested in. Which of the following is TRUE?
 - a. The Broker’s name, address and telephone number must be on each page.
 - b. The Broker’s name, address and telephone number must be on the first or last page.
 - c. I don’t care; I have an extra \$75 to give the LREC.
 - d. Either B or C is correct.

Answer: b

Team Advertising

Within a brokerage office, several licensees may get together and form a team. Similarly, husbands and wives, or parents and grown children, or business partners may get together and form a team. These teams can advertise themselves as such; there must not be any confusion between the team name and the employing brokerage.

In any advertising, the broker’s name and telephone number must be included.

In an ad featuring a team photo, each person must be identified by their first and last names.

- Use of first names only is not acceptable.
- Last name only is not acceptable.
- Use of middle and last name is not acceptable unless registered with Louisiana Real Estate Commission as DBA (“doing business as”). This form is available within the “resources” area of this lesson.
- As with all advertising, you cannot make comparative claims without providing all the required elements for comparative claims.
- If you wish to use years of experience you should include each person’s years of experience separately. This is a suggestion, not a rule.

Discussion:

- Although all advertising must be under the “direct supervision of the sponsoring broker”, licensees are responsible for complying with the rules and regulations.
- The salesperson or associate broker will be charged if their advertisement fails to comply. Each person on a team will receive a separate citation if the team’s advertisement is in violation of the rules.

QUESTION and ANSWER

- Q.** Can I promote myself or my team on one side of a business card as long as all required information is on the other side of the card?
- A.** This is acceptable as long as the brokerage’s name and telephone number are conspicuous, easily identifiable, and discernable.

Cite & Fine: A Heads Up

The Louisiana Real Estate Commission’s new Cite & Fine system, created to alleviate lengthy disciplinary procedures for common violations, is entering the final phase of development and was implemented October 20, 2011. It functions much like a traffic ticket. Violators will be provided a form in which they may elect to either pay the fine or attend a hearing to plead their case.

If a licensee attends a Cite & Fine hearing and is found guilty of the said violation, the licensee’s name will be posted in the newsletter and on the website. The system was originally developed to help deal with advertising violations, but it has turned into a promising tool to assist in expediting other common real estate violations as well.

Licensees should review the Advertising Guidelines Checklist provided on the Louisiana Real Estate Commission website to ensure all advertisements are in compliance with the laws and rules.

Activities and Fines

LSA-R.S.37	ACTIVITY	FINE
1442.A	Conducting authorized activity after expiration of license.	\$325
1447	Failure to obtain required continuing or post-licensing education.	\$325
1449.1	Failure to use mandated purchase agreement.	\$75
1449.A, B	Failure to provide all parties to transaction with completed document within 5 days.	\$75
1449.D	Failure to maintain records for 5 years.	\$150
1455.A.(9)	Failure to disclose license status when acting as a principal.	\$150
1455.A.(21)	Failure to provide parties with an agency disclosure pamphlet or dual agency form.	\$75
1455.A.(33)	Failure to provide written property disclosure form.	\$75
RULES & REGULATIONS	ACTIVITY	FINE
Chapter 25	Improper advertising by licensee.	\$75
Chapter 27	Improper name of account, no signature for broker, escrow accounts interest bearing.	\$75
Chapter 29	Failure to disburse a deposit within 90 days of the broker having knowledge that a dispute exists.	\$250
Chapter 31	Failure to report change of address or telephone number.	\$75
Chapter 35	Failure to disclose status as a licensee.	\$75
Chapter 39	Failure to annotate.	\$75

Enforcement

- Upon receipt of a copy or photograph of advertisement, it will be reviewed utilizing established criteria to determine that a violation has occurred.
- A citation will be sent by certified mail to the licensee and to their sponsoring broker. The licensee will be directed to appear at the Commission for a scheduled Citation Review Hearing.
- If the licensee desires to admit to the violation and pay a \$75 fine within 30 days, the matter may be resolved informally.
- Failure to pay the fine within 30 days will result in the Executive Director issuing a Cease and Desist Order prohibiting any real estate activity.
- If the licensee has a second advertising violation, the fine will double. If there would be a third offense, they would be brought before the Commission for a formal hearing.

Promotional Advertising

Advertising vs. Promotions or Promotional Products

Caps, shirts, name tags, pens, calendars, magnetic signs of football schedules that go on refrigerators, coffee cups, etc. are considered promotions. However, that does not mean that a salesperson or associate broker may advertise just in their name only without providing the broker's name, but they can omit "independently owned and operated". Until this can be addressed further by the Commission, no citations will be issued in this area.