



TREC ADVERTISING REQUIREMENTS

TAR ONLINE TOWN HALL, APRIL 8, 2016

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TEXAS REAL ESTATE COMMISSION



WHY DO WE NEED ADVERTISING RULES?

- ▶ Sec. 1 Statutory requirement aimed at Consumer Protection
- ▶ **101.652. GROUNDS FOR SUSPENSION OR REVOCATION OF LICENSE**
 - (b) (23) publishes or causes to be published an advertisement, including an advertisement by newspaper, radio, television, the Internet, or display, that *misleads or is likely to deceive the public, tends to create a misleading impression, or fails to identify the person causing the advertisement to be published as a licensed broker or agent.*



WHY DO WE NEED ADVERTISING RULES?

- ▶ Statutory requirement supporting free commerce and business competition
- ▶ **Sec. 1101.156. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.**

The commission may not adopt a rule restricting advertising or competitive bidding by a person regulated by the commission except to prohibit a false, misleading, or deceptive practice by the person.

The commission may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the commission a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person 's personal appearance or use of the person 's voice in an advertisement;
- (3) relates to the size or duration of an advertisement used by the person; or
- (4) restricts the person 's advertisement under a trade name that is authorized by a law of this state and registered with the commission.



What does a rule add to statutory provisions?

- ▶ Clarity/transparency
- ▶ What is considered advertising?
 - *(a) For the purposes of this section, an "advertisement" is a written or oral statement or communication by or on behalf of a license holder which induces or attempts to induce a member of the public to use the services of the license holder or service provider. The term "advertisement" includes, but is not limited to, all publications, radio or television broadcasts, all electronic media including email, text messages, social networking websites, and the Internet, business stationery, business cards, signs and billboards. The provisions of this section apply to all advertisements by or on behalf of a license holder unless the context of a particular provision indicates that it is intended to apply to a specific form of advertisement.*
 - *(b) The following information is not considered an advertisement or advertising:*
 - *(1) a communication from a license holder to a member of the public after the member of the public agreed for the license holder to provide services, provided the first communication from the license holder contains the information required by this section; or*
 - *(2) real estate information, including listings, available to the public on a license holder's website, extranet or similar site that is behind a firewall or similar filtering software which requires a password or registration to access that information.*



Clarity and Transparency

- What is considered misleading or likely to deceive the public?
- *(d) For purposes of this section and §1101.652(b)(23) of the Act, deceptive or misleading advertising includes, but is not limited to, the following:*
 - *(1) advertising that is inaccurate in any material fact or in any way misrepresents any property, terms, values, services, or policies;*
 - *(2) advertising a property that is subject to an exclusive listing agreement without the permission of the listing broker and without disclosing the name of the listing broker unless the listing broker has expressly agreed to waive disclosure;*
 - *(3) failing to remove an advertisement about a listed property within 10 days after closing or termination of a listing agreement, unless the status is included in the advertisement;*
 - *(4) an advertisement by a salesperson which identifies the salesperson as a broker; or*
 - *(5) advertising a property in a manner that creates a reasonable likelihood of confusion regarding the permitted use of the property.*



Clarity and Transparency

- ▶ What “tends” to create a misleading impression?
- ▶ *(c) An advertisement must clearly and conspicuously contain the name of the broker, either a business entity or an individual. For purposes of this section, the broker, or a salesperson sponsored by the broker, may use the broker's assumed name instead of the name in which the broker is licensed, if the assumed name is registered with the Commission under subsection (e) of this section. An advertisement may not contain an assumed name unless the broker has registered that assumed name with the Commission. If the broker's name or its assumed name includes a salesperson's name, the advertisement must include another assumed name of the broker that does not include a salesperson's name, or the designated broker's name.*
- ▶ *(g) A broker or salesperson may not place an advertisement that in any way:*
 - ▶ *(1) implies that a salesperson is the person responsible for the operation of a real estate brokerage business; or*
 - ▶ *(2) causes a member of the public to believe that a person not authorized to conduct real estate brokerage is personally engaged in real estate brokerage.*



Clarity and Transparency

- How can you identify yourself as a licensed broker or agent?
- *(f) An advertisement placed by a license holder must include a designation such as "agent," "broker" or a trade association name that serves clearly to identify the advertiser as a real estate agent.*
- *(l) An advertisement placed where it is likely to attract the attention of passing motorists or pedestrians must contain language that clearly and conspicuously identifies the person publishing the advertisement as a real estate broker or agent. This subsection does not apply to signs placed on or providing directions to real property listed for sale, rental or lease with the broker who has placed the sign, provided the signs otherwise comply with this section and the Act.*



Balance

- ▶ Balance competing statutory requirements
 - Allowing use of trade name v. likely to deceive the public
- ▶ *(h) Except as provided by subsections (c) and (g) of this section, a business entity licensed as a real estate broker may do business in the name in which it was chartered or registered by the Office of the Secretary of State.*
- ▶ *(c) ... An advertisement may not contain an assumed name unless the broker has registered that assumed name with the Commission. If the broker's name or its assumed name includes a salesperson's name, the advertisement must include another assumed name of the broker that does not include a salesperson's name, or the designated broker's name.*



Balance

- *Representations v. disclosures and consents*
- *(m) An advertisement containing an offer to rebate a portion of a license holder's commission must disclose that payment of the rebate is subject to the consent of the party the license holder represents in the transaction. If payment of the rebate is contingent upon a party's use of a selected service provider, the advertisement also must contain a disclosure that payment of the rebate is subject to restrictions.*
- *(n) If an advertisement offers, recommends or promotes the use of services of a real estate service provider other than the license holder and the license holder expects to receive compensation if a party uses those services, the advertisement must contain a disclosure that the license holder may receive compensation from the service provider.*
- *(o) A license holder may not advertise information regarding service providers that ranks the providers unless the ranking is based on disclosed objective criteria.*
- *(p) A license holder may not advertise that the license holder offers, sponsors, or conducts Commission approved courses in conjunction with an approved school or other approved organization unless the license holder is approved by the Commission to offer the courses.*



Still not enough clarity!

▶ Safe harbors by policy

- Specifics that license holders can rely on to be in compliance with the rule
- What does “clearly and conspicuously” contain the “name of the broker mean?”
- Broker’s name must be at least ½ the size of the largest “contact information”
- What is “contact information”?
- Plain English usage - any information used to contact the advertiser
- What names signify licensed as broker or sales agent?
- “realty” can be used to signify that the advertiser is a licensed broker or agent, but not “properties”, “homes”, or “real estate”



Two Brokerage Scenarios

Broker: Death Star Properties, LLC
(owned by agent Darth Vader)

Designated Broker: Emperor
Palpatine

Registered DBAs:

- Dark Side Realty
- Darth Vader Supreme Team

Sales Agent: Darth Vader

Broker: With You Be Homes, Inc.

Nat'l logo:



Designated Broker: Yoda

Registered DBAs:

- Skywalker Light Saber Homes
- The Sales Force Group

Sales Agent: Luke Skywalker



Is the Ad compliant?

For Sale

Newly Acquired Planets

Call Darth Vader

666-666-6666

Death Star Properties, LLC

- ▶ No, this ad is not compliant
- ▶ Although it includes the brokerage name, "Properties" is not a term that indicates the advertiser is a licensed broker or agent
- ▶ it must also contain an identifier such as broker, agent, REALTOR®, or realty.



Is the Ad compliant?

**Let Our Force
Be With You**

Call Luke Skywalker

111-111-1111

With you Be Homes, Inc., Broker

- ▶ Yes, this ad is compliant
- ▶ It contains the brokerage name and even though "Homes" is not a term that indicates licensure, it does contain an identifier such as broker, agent, REALTOR®, or realty.



Is the Ad compliant?

For Sale **Newly Acquired Planets**

Call Darth Vader
666-666-6666

Darth Vader Supreme Team, Broker

- ▶ **Dark Side Realty**
- ▶ **Death Star Properties, LLC**

- ▶ No, this ad is not compliant
- ▶ Although the brokerage registered assumed name contains an identifier such as broker, agent, REALTOR®, or realty, the use of the agent's name in the assumed name implies that the agent is the person responsible for the operation of the brokerage.
- ▶ It must also include the broker's name or another assumed name of the broker that does not contain the agent's name.



Is the Ad compliant?

**Let Our Force
Be With You**

Call Luke Skywalker,
REALTOR®

111-111-1111

The Sales Force Group

- ▶ Yes, this ad is compliant
- ▶ It contains a registered assumed name of the broker and contains an identifier such as broker, agent, REALTOR®, or realty.
- ▶ It does not contain the agent's name in the assumed name



Is the Ad compliant?

**Let Our Force
Be With You**

Call Luke Skywalker, Agent

111-111-1111

Skywalker Light Saber Homes

- With You Be Homes, Inc.
- The Sales Force Group

- ▶ No, this ad is not compliant
- ▶ Although it contains a registered assumed name and an identifier such as broker, agent, REALTOR®, or realty, the use of part of the agent's name in the assumed name implies that the agent is the person responsible for the operation of the brokerage.
- ▶ It must also include the broker's name or another assumed name of the broker that does not contain the agent's name.



Is the Ad compliant?

**Let Our Force
Be With You**

Call Luke Skywalker, Agent
111-111-1111



- ▶ No, this ad is not compliant
- ▶ Although it contains an identifier such as broker, agent, REALTOR®, or realty, it does not contain the broker's name or assumed name.
- ▶ A logo is not acceptable as a substitution for the broker's name



Is the Ad compliant?

For Sale

Newly Acquired Planets

Call Darth Vader, Owner

666-666-6666

Dark Side Realty

- ▶ No, this ad is not compliant
- ▶ Although it contains a registered assumed name and an identifier such as broker, agent, REALTOR®, or realty, the use of the word “owner” next to the agent’s name, even though it is a true statement, implies that the agent is the person responsible for the operation of the brokerage and is inherently misleading.



Changes to Advertising Rule

- ▶ Some changes to the current rule circulated for Listening Tour
- ▶ Goal to have a rule that:
 - ▶ is less complicated - easier for brokers to understand and apply; and
 - ▶ lets the consumer easily find the individual responsible for brokerage activity
- ▶ But...still bound by the statutory provision set out in beginning of presentation:
 - ▶ Can't be **misleading**
 - ▶ Must identify advertiser *as a licensed broker or agent*.
- ▶ And still need clarity and "safe harbors" to make it easier for license holders to be in compliance



Ideas from proposal and comments from Listening Tour

- ▶ Simplify rules for **names** in Advertisement to **not be misleading**:
 - ▶ Each advertisement must contain the broker's name as licensed or the broker's registered primary assumed name (cannot contain a sales agent's name)
 - ▶ Other registered assumed names (including teams and groups) can also be in the ad with no name restrictions
 - ▶ Set clear prominence criteria
 - ▶ Clearly distinguish between an assumed business name and an alternate name



Ideas from proposal and comments from Listening Tour

- ▶ To identify advertiser as licensed broker or agent:
- ▶ Have more options available to use
- ▶ Set clear prominence criteria
- ▶ allow use of a different approved identifier for different types of advertisements
- ▶ Examples of ideas for optional possible identifiers:
 - ▶ "Broker" or "Agent" following name
 - ▶ Licensed by the Texas Real Estate Commission
 - ▶ TREC #12345678 (license number)
 - ▶ TREC logo with "regulated by" inserted
 - ▶ Nationally recognized real estate brokerage company name and logo



Ideas from proposal and comments from Listening Tour

- ▶ Other changes:
- ▶ Make disclosure requirements for social media less cumbersome
 - ▶ Current rule requires “TREC DISCLOSURE” hyperlink to information required by rule
 - ▶ Proposal idea -the account user profile of the license holder must be readily accessible by the viewer and include the information required by the rule
- ▶ Consolidate all examples of deceptive or misleading advertisement
- ▶ Change time for registering assumed names from 30 days to 10 days so consumer can find license holder’s broker whenever assumed name used
- ▶ With new IABS form posting requirements, is identity of broker still necessary on advertisement that includes a business website address?



Speaking of IABS

- ▶ Every license holder should now have the new IABS form posted on the homepage of their business website.
- ▶ The linked IABS should be completed with all *applicable* contact information
- ▶ The requirement to post the IABS on your business website is a new, separate and distinct requirement from your existing obligation to deliver the IABS at the time of your first substantive communication with a party regarding specific property
- ▶ TREC has information about the requirements for the Consumer Protection Notice and IABS on our website under “Hot Topics”. There is also some guidance on how to link to a completed IABS.



Speaking of IABS

- ▶ Keep in mind the purpose of the requirements for the IABS is to make sure that the consumer is informed about the ways they can be represented in a real estate transaction and what minimum brokerage services are required *BEFORE* the consumer enters into an agency relationship with a license holder
- ▶ Bottom line: we have the same objective -
- ▶ to inform consumers about professional real estate services.



ADDITIONAL QUESTIONS?

- ▶ **Contact our General Counsel, Kerri Lewis
at General.Counsel@trec.texas.gov**