



STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES
ALBANY, N.Y. 12208-3490

GAIL S. SHAPPER
SECRETARY OF STATE

REAL ESTATE ADVERTISING GUIDELINES

The fair and proper conduct of the business of a real estate broker includes advertising. These advertising guidelines have been prepared to help brokers develop newspaper advertising, business cards, stationery and signs that comply with various laws, regulations and good business practices.

GENERAL GUIDELINES:

- **Honesty in Advertising:** As a general rule and guiding principle, any advertisement placed by a real estate broker must be truthful and not misleading to the public.

- **Blind Ads:** 19NYCRR Rule 175.25(a) requires that all advertisements placed by a broker must indicate that the advertiser is a broker, or give the name of the broker and his/her telephone number.

Correct Copy
House, 1/2 acre, \$90,000
John Doe, Broker (or)
John Doe, XXX Realty
518-XXX-1000

Wrong Copy
House, 1/2 acre, \$90,000
518-XXX-1000

- **Geographical Locations:** 19NYCRR Rule 175.25(b) requires that all advertisements placed by a broker which state that property is in the vicinity of a geographical area or territorial subdivision must include as part of such advertisement the name of the geographical area or territorial subdivision in which such property is actually located.

Correct Copy
House, 1/2 acre, \$90,000
New Concord, John Doe, Broker
518-XXX-1000

Wrong Copy
House, 1/2 acre, \$90,000
vicinity Berkshire Mts.
John Doe, Broker, 518-XXX-1000

- **Licensed Name:** Advertisements should state the exact name under which a license was issued. It is possible that the use of advertising of any other name might tend to mislead the public and not correctly identify the true advertiser. This has occurred in large communities where there are several individuals who bear the same name or where several similar franchises are engaged in the real estate brokerage business. If abbreviations are necessary, a licensee should use their first initial, first and middle initials, or nickname and last name. Business names should be listed exactly as they appear on the broker license. An advertisement which contains the business name of the broker and his/her telephone number may also contain the names of individuals licensed to that broker.

BUSINESS CARDS:

- **Categories of Information:** A business card should include the following information exactly as stated on the license:

- The individual's full name;
- Type of license held (Broker, Associate Broker, Salesperson);
- Licensed name of firm;
- Firm's business address.

Optional information can also be added:

- Business telephone number;
- Residence telephone number (Indicate—Residence, Res., or Home);
- Real estate specialization (i.e. Specializing in Commercial Properties);
- Brokers may include any Title of Office in the business (i.e. Partner).
- Nickname of licensee (i.e. John [Bud] Doe)

FORMATTING ADVERTISING:

- **Type Size:** There are generally no type size requirements. However, certain print size relationships should be maintained. A salesperson's name should not be larger than the licensed brokerage firm. A licensed principal of the firm can be shown in a larger type than the firm name.

- **Placement:** An individual's name can be placed anywhere on an advertisement or business card.

Correct Copy

XXX Realty

10 Acorn Lane

Anytown, USA

John Doe

Salesperson

Wrong Copy

JOHN DOE

Salesperson

XXX Realty

10 Acorn Lane

Anytown, USA

- **Abbreviations:** Some standard abbreviations may be used to reduce advertising costs:

Full Text

Licensed real estate broker

Licensed associate real estate broker

Licensed real estate salesperson

Residence (or home)

Abbreviated Text

Lic. r.e. broker

Lic. assoc. r.e. broker

Lic. r.e. salesperson

Res.

OTHER LEGAL REQUIREMENTS: A broker should be aware that there are other federal and state laws which may impact on its advertising practices. Often these laws deal with unlawful discriminatory activities (e.g., see the federal Fair Housing Act and the New York State Human Rights Law). Also of note are the federal Truth in Lending regulations, which provide guidelines with respect to financial arrangements for real property purchases.

Brokers should additionally be sensitive to local zoning requirements and not advertise properties in obvious violation of those requirements. If the existing attributes of a listed property have the potential for a legal variance, it may be so advertised as a "potential" (i.e. potential mother-daughter). Once advertised in this manner, the broker assumes the obligation of making it clear to prospective buyers that the "mother-daughter" legal status can only be achieved through formal application by the buyer for a variance.

SIGNS: Article 12A of the Real Property Law, Section 441-a.3 and 19NYCRR Rule 175.26 set general specifications for brokerage business signs.

- **Postings:** Each licensed business office location requires the posting of a business sign. The sign must contain the licensed name and the words "licensed real estate broker".

- **Locations of postings:**

- On the outside of the building in which the office is located and be of sufficient size to be readable from the street; or,
- If in an office, apartment or hotel building, on the directory or space provided by the building for posting the names of occupants; or,
- If the apartment building does not permit a directory or lobby posting, the sign may be posted on the entrance door or corridor wall next to the entrance door to the business office.

[6/24/94]



**STATE OF NEW YORK
DEPARTMENT OF STATE
DIVISION OF LICENSING SERVICES
ALBANY, N.Y. 12208-3490**

**GAIL S. SHAFER
SECRETARY OF STATE**

UNLICENSED REAL ESTATE ASSISTANTS

Across the country, more and more real estate businesses are utilizing unlicensed employees or personal assistants to help with routine tasks. Consideration must be carefully given to the assignments given to these unlicensed individuals.

WHAT MAY THEY LEGALLY DO? In general, they may engage in any office activities that are not specified in Section 440 of Article 12A of the New York State Real Property Law.

Some of these general office activities that may be performed by an employee, secretary or a personal assistant who does not hold a real estate license are:

- Answer the phone, forward calls, and take messages.
- Arrange appointments, by telephone, for the licensee.
- Follow up on loan commitments after a contract has been negotiated and generally secure status reports on the loan progress.
- Assemble documents for closing.
- Write ads for approval of broker and place approved classified advertising.
- Type contract forms for approval of broker.
- Compute commission checks.
- Place or remove signs from property.
- Order items of repair as directed by the broker.
- Prepare flyers and promotional information for approval by broker.
- Schedule appointments for licensees to show listed property.
- Gather information for a comparative market analysis.
- Gather information for an appraisal.
- Monitor licenses and personnel files.
- Perform secretarial and clerical duties such as typing of letters and filing.

WHO IS RESPONSIBLE? The licensed broker is explicitly responsible for the supervision and control of activities conducted in the name of the licensed real estate business. The broker is required to extend and provide necessary training, supervision and control over licensed and nonlicensed services being provided to consumers on behalf of the licensed brokerage business, including any work performed on behalf of the brokerage or on behalf of its' associate brokers or salespeople by unlicensed assistants.

HOW SHOULD PAYMENT BE MADE? Unlicensed assistants may be paid directly by either the licensed broker or salesperson. The method of reimbursement for unlicensed activities is best handled on an hourly, per activity, or salaried basis.

If compensated on a completed transaction basis, the assistant must be licensed as a real estate salesperson and must receive compensation directly from the licensed broker.

[6/24/94]

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

Before you enter into a discussion with a real estate agent regarding a real estate transaction, you should understand what type of agency relationship you wish to have with that agent.

New York State law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates.

SELLER'S OR LANDLORD'S AGENT

If you are interested in selling or leasing real property, you can engage a real estate agent as a seller's agent. A seller's agent, including a listing agent under a listing agreement with the seller, acts solely on behalf of the seller. You can authorize a seller's or landlord's agent to do other things including hire subagents, broker's agents or work with other agents such as buyer's agents on a cooperative basis. A subagent, is one who has agreed to work with the seller's agent, often through a multiple listing service. A subagent may work in a different real estate office.

A seller's agent has, without limitation, the following fiduciary duties to the seller: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and a duty to account.

The obligations of a seller's agent are also subject to any specific provisions set forth in an agreement between the agent and the seller.

In dealings with the buyer, a seller's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

BUYER'S OR TENANT'S AGENT

If you are interested in buying or leasing real property, you can engage a real estate agent as a buyer's or tenant's agent. A buyer's agent acts solely on behalf of the buyer. You can authorize a buyer's agent to do other things including hire subagents, broker's agents or work with other agents such as seller's agents on a cooperative basis.

A buyer's agent has, without limitation, the following fiduciary duties to the buyer: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and a duty to account.

The obligations of a buyer's agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer.

In dealings with the seller, a buyer's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the buyer's ability and/or willingness to perform a contract to acquire seller's property that are not inconsistent with the agent's fiduciary duties to the buyer.

BROKER'S AGENTS

As part of your negotiations with a real estate agent, you may authorize your agent to engage other agents whether you are a buyer/tenant or seller/landlord. As a general rule, those agents owe fiduciary duties to your agent and to you. You are not vicariously liable for their conduct.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent acting directly or through an associated licensee, can be the agent of both the seller/landlord and the buyer/tenant in a transaction, but only with the knowledge and informed consent, in writing, of both the seller/landlord and the buyer/tenant.

In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the buyer/tenant and seller/landlord.

The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer/tenant and seller/landlord.

An agent acting as a dual agent must explain carefully to both the buyer/tenant and seller/landlord that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the buyer/tenant and seller/landlord are giving up their right to undivided loyalty.

A BUYER/TENANT OR SELLER/LANDLORD SHOULD CAREFULLY CONSIDER THE POSSIBLE CONSEQUENCES OF A DUAL AGENCY RELATIONSHIP BEFORE AGREEING TO SUCH REPRESENTATION.

GENERAL CONSIDERATIONS

You should carefully read all agreements to ensure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal, tax or other advice is desired, consult a competent professional in that field.

Throughout the transaction you may receive more than one disclosure form. The law requires each agent assisting in the transaction to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

ACKNOWLEDGMENT OF PROSPECTIVE BUYER/TENANT

- (1) I have received and read this disclosure notice.
- (2) I understand that a seller's/landlord's agent, including a listing agent, is the agent of the seller/landlord exclusively, unless the seller/landlord and buyer/tenant otherwise agree.
- (3) I understand that subagents, including subagents participating in a multiple listing service, are agents of the seller/landlord exclusively.
- (4) I understand that I may engage my own agent to be my buyer's/tenant's broker.
- (5) I understand that the agent presenting this form to me,

_____ of
 (name of licensee)
 _____ is
 (name of firm)

(check applicable relationship)
 an agent of the seller/landlord
 my agent as a buyer's/tenant's agent

Dated:
 Buyer/Tenant:

 Dated:
 Buyer/Tenant:

ACKNOWLEDGMENT OF PROSPECTIVE SELLER/LANDLORD

- (1) I have received and read this disclosure notice.
- (2) I understand that a seller's/landlord's agent, including a listing agent, is the agent of the seller/landlord exclusively, unless the seller/landlord and buyer/tenant otherwise agree.
- (3) I understand that subagents, including subagents participating in a multiple listing service, are agents of the seller/landlord exclusively.
- (4) I understand that a buyer's/tenant's agent is the agent of the buyer/tenant exclusively.
- (5) I understand that the agent presenting this form to me,

_____ of
 (name of licensee)
 _____ is
 (name of firm)

(check applicable relationship)
 my agent as a seller's/landlord's agent
 an agent of the buyer/tenant

Dated:
 Seller/Landlord:

 Dated:
 Seller/Landlord:

ACKNOWLEDGEMENT OF PROSPECTIVE BUYER/TENANT AND SELLER/LANDLORD TO DUAL AGENCY

- (1) I have received and read this disclosure notice.
- (2) I understand that a dual agent will be working for both the seller/landlord and buyer/tenant.
- (3) I understand that I may engage my own agent as a seller's/landlord's agent or a buyer's/tenant's agent.
- (4) I understand that I am giving up my right to the agent's undivided loyalty.
- (5) I have carefully considered the possible consequences of a dual agency relationship.
- (6) I understand that the agent presenting this form to me,

_____ of
 (name of licensee)
 _____ is
 (name of firm)

a dual agent working for both the buyer/tenant and seller/landlord, acting as such with the consent of both the buyer/tenant and seller/landlord and following full disclosure to the buyer/tenant and seller/landlord.

Dated:
 Buyer/Tenant:

 Dated:
 Buyer/Tenant:

Dated:
 Seller/Landlord:

 Dated:
 Seller/Landlord:

ACKNOWLEDGEMENT OF THE PARTIES TO THE CONTRACT

- (1) I have received, read and understand this disclosure notice.

(2) I understand that _____ of
 (name of real estate licensee)
 _____ is
 (name of firm)

(Check applicable relationship) an agent of the seller/landlord
 an agent of the buyer/tenant
 a dual agent working for both the buyer/tenant and seller/landlord, acting as such with the consent of both buyer/tenant and seller/landlord and following full disclosure to the buyer/tenant and seller/landlord.

I also understand that _____ of
 (name of real estate licensee)
 _____ is
 (name of firm)

(Check applicable relationship) an agent of the seller/landlord
 an agent of the buyer/tenant
 a dual agent working for both the buyer/tenant and seller/landlord, acting as such with the consent of both buyer/tenant and seller/landlord and following full disclosure to the buyer/tenant and seller/landlord.

Dated:
 Buyer/Tenant:

 Dated:
 Buyer/Tenant:

Dated:
 Seller/Landlord:

 Dated:
 Seller/Landlord:

**DECLARATION BY REAL ESTATE LICENSEE
REQUIRED BY SECTION 443(3) (F) OF THE REAL PROPERTY LAW**

STATE OF NEW YORK)
) ss.:
COUNTY OF)

_____ (name), being duly sworn, deposes and says:

1.) I am a principal broker / associate broker / licensed salesperson affiliated with _____ (name of agency). I make this statement in compliance with Section 443(3) (F) of the New York State Real Property Law.

2.) On _____, 199____, I presented to _____ (name of buyer or seller) the disclosure required under Section 443 of the Real Property Law. The actual disclosure form presented is attached to this statement.

3.) Although I indicated to the buyer / seller that New York State Law required that I request that he / she sign the disclosure, he / she refused to sign the disclosure form when presented.

(Name)

Sworn to before me this _____
day of _____, 199_____.

Notary Public