WISCONSIN REALTORS® ASSOCIATION

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LEGAL UPDATE

A MONTHLY GUIDE TO WISCONSIN REAL ESTATE LAW & POLICY

Real Estate Advertising Methods

Every REALTOR® knows the importance of advertising. Licensees advertise listed properties and market themselves. Clever and efficient marketing is essential to succeeding in the competitive real estate industry. The savvy REALTOR® can engage in attractive, interesting advertising without crossing the lines and advertising in a manner that violates applicable law.

The laws and regulations which impact real estate advertising come from many sources. Federal, state and local laws, rules and ordinances regulate who can advertise, the authority required to advertise on behalf of another, when the advertising may be performed, where the advertising may appear, the content of the advertising and the audience for the advertising.

This *Legal Update* examines the laws, regulations and rules affecting the means or technologies used by REALTORS® in real estate advertising and marketing. Topics reviewed include general real estate advertising regulations and the guidelines for methods used to communicate the advertising message. REALTORS® often employ social media and Internet advertising, email, the MLS and real estate signs. Some may also use telephone solicitations, text messages or fax. The *Update* concludes with a section of Legal Hotline questions and answers regarding advertising.

Content rules

Some methods of communication may bring with them specific regulations regarding their use, but all real estate advertising is generally subject to the same rules with regard to content. This includes traditional means of advertising and communication as well as electronic communications via social media. The fact the information is going out via an electronic means does not change the applicability of the Wisconsin Administrative Code advertising rules, the Code of Ethics, or the need for compliance with MLS copyright rules. For company listings, an agent also may wish to check with the managing broker about the firm's policies for advertising the firm's listings.

All advertisements, regardless of where they appear, must have the consent of the seller and must contain the name of the listing broker. Advertising, including online advertising and advertising on Facebook, by a Wisconsin licensee who is also a REALTOR® is subject to compliance with Wis. Admin. Code § REEB 24.04 and Article 12 of the REALTOR® Code of Ethics. Per § REEB 24.04, licensees may not advertise in a manner that is false, deceptive or misleading and shall disclose the brokerage firm's name exactly as printed on the entity's license or a trade name filed with the Department of Safety and Professional Services (there are exemptions for the sale or rental of real estate owned by the licensee). Wis. Admin. Code § REEB 24.04(3) states that "Brokers shall not advertise without the consent of the owner." Article 12 of the Code states: "REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing, and other representations."

For further discussion of the content of real estate advertising, including the basic rules for all advertising, the regulations pertaining to advertising different sorts of listings and property information, the guidelines for advertising that includes credit terms, and the rules for avoiding discrimination under the fair housing rules, refer to the August 2015 *Legal Update*, "Real Estate Advertising Content," at www.wra.org/LU1508.

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Communication Methods in a Digital Age

Like the rest of the world, real estate has gone digital, and REALTORS® increasingly use technology in their daily practice to communicate and to conduct their marketing and promotions. Consider that in 1964, 40 percent of homebuyers looked in the newspaper to find a home and 7 percent drove around looking for an open house. In this day and age,

homebuyers increasingly tend to look for properties online as their first step.

A research study from the National Association of REALTORS® also revealed that over 90 percent of real estate firms have websites, and the most common feature is property listings. Ninety-three percent of REALTORS® preferred to communicate with their clients through email, while only 26 percent prefer to use postal mail. Eighty-five percent prefer to communicate through text messaging, and 31 percent use instant messaging. Most members feel comfortable using social media, but 7 percent of REALTORS® do not use social media. The most-used platforms include Facebook, LinkedIn, Google+, YouTube, Twitter, Pinterest, real estate blogs and Instagram. Thus it comes as no surprise that social media plays a huge role in real estate advertising.

Buyers like to look for properties online. They look at websites and videos, many using their mobile devices. At the same time, buyers also do consider yard signs and open houses when searching for a home.

ⓘ MORE INFORMATION

For further statistics see Real Estate in a Digital Age at www.realtor.org/reports/real-estate-in-a-digital-age.

FTC provides internet marketing guidance

Internet marketing utilizes text, interactive graphics, video and audio. Although the media are new, many of the same rules that apply to other forms of advertising apply to electronic marketing. These rules and guidelines protect businesses and consumers. The cardinal rules of the Federal Trade Commission are that advertising must tell the truth and not mislead consumers and that claims must be substantiated, not unlike what Wisconsin law and the Code of Ethics provide. Consumer protection laws still apply across the board to print, radio, TV and online advertising delivered on a desktop computer or a mobile device and prohibit unfair or deceptive advertising in any medium. The FTC has determined that a representation, omission or practice is deceptive if it is likely to mislead consumers and affect consumers' behavior or decisions about the product or service. In addition, an act or practice is unfair if the injury it causes, or is likely to cause, is substantial, not outweighed by other benefits and not reasonably avoidable.

If the disclosure of information is necessary to prevent an online ad claim from being deceptive or unfair, it has to be clear and conspicuous on all devices and platforms that consumers may use to view their ads. The FTC guidance, *.com Disclosures: How to Make Effective Disclosures in Digital Advertising,* takes into account the expanding use of smartphones with small screens and the rise of social media marketing. This guidance may be viewed at www.ftc.gov/tips-advice/business-center/guidance/com-disclosures-how-make-effective-disclosures-digital.

ⓘ MORE INFORMATION

Also see "Advertising and Marketing on the Internet: Rules of the Road," at www.ftc.gov/tips-advice/business-center/guidance/advertising-marketing-internet-rules-road for additional guidance for the FTC.

Email: FTC CAN SPAM rules

The federal CAN-SPAM Act applies to all solicited and unsolicited commercial emails, defined as "any electronic mail message the primary purpose of which is the commercial advertisement or promotion of a commercial product or service." This includes emails that promote or sell a product or service for a fee, or promote content on commercial websites, including as REALTOR® emails offering properties or brokerage services.

CAN-SPAM requires all commercial emails to include a return email address and a valid physical postal address, a clear and conspicuous "opt-out" notice, a mechanism or active email address that the recipient may use to ask to not receive further email, a clear and conspicuous notice that the message is an advertisement or a solicitation, and clear notice in the subject heading if a message includes pornographic or sexual content.

The act requires that senders honor all opt-out requests. If a recipient makes a request to not receive commercial email messages from the sender, it is unlawful for the sender to send another commercial electronic mail message at any time after 10 days from the receipt of the original message unless the recipient has affirmatively consented to receive emails subsequent to the first request to not receive commercial emails. Any database that a company or business uses to manage email communications must flag people who have asked not to receive any more commercial email. Any software used to send messages in bulk quantities must be able to track the do-not-email requests in the database. Procedures must be followed to ensure that opt-out requests are honored within 10 days after receipt.

Each separate email in violation of the CAN-SPAM Act is subject to penalties of up to $16,000, so non-compliance can be costly. Other CAN-SPAM requirements include:

1. Don't use false or misleading header information. The "From," "To," "Reply-To," and routing information — including the originating domain name and email address — must be accurate and identify the person or business who initiated the message.
2. Don't use deceptive subject lines.
3. Clearly and conspicuously identify the message as an advertisement.
4. The message must include a valid physical postal address. This can be a current street address, a post office box registered with the U.S. Postal Service, or a private mailbox registered with a commercial mail receiving agency established under Postal Service regulations.

See the Federal Trade Commission's "CAN-SPAM Act: A Compliance Guide for Business" at www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business.

ⓘ MORE INFORMATION

More information about CAN SPAM is available on pages 12-16 of the August 2005 *Legal Update*, "Federal Laws Impacting REALTOR® Practice," at www.wra.org/LU0508.

It's also illegal to send unsolicited text messages from an auto-dialer — equipment that stores and dials phone numbers using a random or sequential number generator. See the Federal Communications Commission's "Spam: Unwanted Text Messages and Email" at www.fcc.gov/guides/spam-unwanted-text-messages-and-email and transition.fcc.gov/cgb/consumerfacts/canspam.pdf and guidance/advertising-marketing-internet-rules-road for additional guidance from the FTC.

CAN-SPAM rules for wireless devices

The CAN-SPAM Act requires the FCC to issue rules with regard to commercial email and some text messages sent to wireless devices such as cell phones — not email in general. REALTORS® who send commercial emails to wireless devices such as cell phones will need to first check the FCC's list of wireless domain names. FCC rules for mobile services commercial messages (MSCM) impose a $250 fine for each commercial email sent to any domain name on the list absent express prior permission from the MSCM recipient. Consent can be obtained verbally or in writing. For the list of domain names to which unsolicited email may not be sent, visit transition.fcc.gov/cgb/policy/DomainNameDownload.html.

MLS Advertising Guidelines

The first thing to know about advertising in a REALTOR® Multiple Listing Service where the brokerage firm is a participant is that each MLS has its own rules and regulations applicable to the advertising of listed properties offered by participants. The following discussion overviews some of the model rules from NAR. Often the model rules will be substantially the same as the rules in individual MLSs but there are variations, so REALTORS® should always review the rules of the MLS they are using whenever there is a question or concern.

"The first thing to know about advertisig in a REALTOR® Multiple Listing Service where the brokerage firm is a participant is that each MLS has its own rules and regulations."

Under the model MLS rules, listings taken by participants generally must be delivered to the MLS within a certain time period, often 48 hours. Listings for single-family homes, vacant lots and acreage, and two-family, three-family and four-family residential buildings for sale or exchange are subject to this rule. Listings for other property types are also typically covered. The listing contract must include the seller's written authorization to submit the agreement to the MLS. Any listing taken on a contract to be filed with the MLS is subject to the rules and regulations of the service.

Types of listings

The MLS shall accept exclusive right-to-sell listing contracts and exclusive agency listing contracts, and may accept other listing agreements that make it possible for the listing broker to offer compensation to the other MLS participants acting as subagents, buyer agents, or both. The MLS may not accept net listings because they are deemed unethical and, in most states, illegal. Open listings also generally are not accepted because there is no offer of cooperation and compensation extended to other brokers. An MLS may accept limited service and MLS entry-only listings and flag them with a symbol to alert cooperating brokers.

Each MLS establishes different types of properties that may be filed, such as residential, motel-hotel, residential income, mobile homes, subdivided vacant lots, mobile home parks, land and ranch, commercial income, business opportunity and industrial. Only listings of the designated types of property located within the jurisdiction of the MLS are required to be submitted. Listings of property located outside the MLS's jurisdiction will (or will not) be accepted if submitted voluntarily by a participant, but cannot be required.

Seller authority

If the seller refuses to permit the listing to be disseminated by the MLS, the participant files the office-exclusive listing with the MLS but the listing shall not be disseminated to the participants. The listing broker may also have to file a certification or form signed by the seller indicating that he or she does not want the listing displayed in the MLS.

Listing brokers may withdraw listings from the MLS before the expiration date of the listing contract, provided notice is filed with the service, including a copy of the agreement between the seller and the listing broker that authorizes the withdrawal. Sellers do not have the unilateral right to require an MLS to withdraw a listing without the listing broker's concurrence. However, when a seller can document that his exclusive relationship with the listing broker has been terminated, the MLS may remove the listing at the request of the seller.

Listings filed with the service shall have a definite and final termination date. Listings filed with the MLS will automatically be removed from current listings on the expiration date specified in the listing, unless prior to that date the MLS receives notice that the listing has been extended or renewed. If notice of renewal or extension is received after the listing has been removed, the extension or renewal will be published in the same manner as a new listing. Extensions and renewals of listings must be signed by the seller and filed with the service.

Listing information in MLS display

The full gross listing price stated in the listing contract will be included in the information published in the MLS compilation of current listings, unless the property is subject to auction. The MLS shall not fix, control, recommend, suggest or maintain commission rates or fees for services to be rendered by participants. Further, the MLS shall not fix, control, recommend, suggest or maintain the division of commissions or fees between cooperating participants or between participants and nonparticipants.

Status changes, including final closing of sales and sales prices, shall be reported to the MLS by the listing broker within the time frame established by the MLS. The listing contracts filed with the MLS should include a provision granting the listing broker authority to advertise, to file the listing with the MLS, to provide timely notice of status changes of the listing to the MLS, and to provide sales information including selling price to the MLS upon sale of the property. In disclosure states like Wisconsin, if the sale price of a listed property is recorded, the reporting of the sale price may be required by the MLS.

The listing broker shall report to the MLS, often within 24 hours, that a contingency on file with the MLS has been fulfilled or renewed, or the contract cancelled. The listing broker shall immediately report the cancellation of any pending sale, and the listing shall be reinstated immediately.

MLS participants

A listing shall not be advertised by any participant other than the listing broker without the prior consent of the listing broker.

MLS rules provide that only the "for sale" sign of the listing broker may be placed on a property. Prior to closing, only the "sold" sign of the listing broker may be placed on a property, unless the listing broker authorizes the cooperating (selling) broker to post such a sign.

Commissions

When filing listings with a REALTOR® association MLS, a participant is making blanket unilateral offers of compensation to the other MLS participants, and shall therefore specify the compensation being offered to the other MLS participants on each listing filed with the service. Specifying the compensation on each listing is necessary because the cooperating broker has the right to know what his compensation shall be prior to his or her endeavor to sell.

The compensation specified on listings filed with the MLS shall appear in one of two forms. The information published shall clearly inform the participants as to the compensation they will receive in cooperative transactions, unless advised otherwise by the listing broker, in writing, in advance of submitting an offer to purchase. The compensation specified on listings published by the MLS shall be shown in one of the following forms:

1. By showing a percentage of the gross selling price.
2. By showing a definite dollar amount.

MLSs may also, as a matter of local discretion, allow participants to offer cooperative compensation as a percentage of the net sales price, with the net sales price defined as the gross sales price minus buyer upgrades in new construction and seller concessions as defined by the MLS unless otherwise defined by state law or regulation.

The listing broker retains the right to determine the amount of compensation offered to other participants — acting as subagents, buyer agents, or in other agency or non-agency capacities defined by law — which may be the same or different. This shall not preclude the listing broker from offering any MLS participant compensation other than the compensation indicated on any listing published by the MLS, provided the listing broker informs the other broker, in writing, in advance of submitting an offer to purchase, and provided that the modification in the specified compensation is not the result of any agreement among all or any other participants in the service. Any superseding offer of compensation must be expressed as either a percentage of the gross sales price or as a flat dollar amount. Nothing in the MLS rules precludes a listing participant and a cooperating participant, as a matter of mutual agreement, from modifying the cooperative compensation to be paid in the event of a successful transaction.

The listing broker shall specify, on each listing filed with the MLS, the compensation offered to other MLS participants. Such offers are unconditional except that entitlement to compensation is determined by the cooperating broker's performance as the procuring cause of the sale or lease. The listing broker's obligation to compensate any cooperating broker as the procuring cause of the sale or lease may be excused if it is determined through arbitration that, through no fault of the listing broker and in the exercise of good faith and reasonable care, it was impossible or financially unfeasible for the listing broker to collect a commission pursuant to the listing contract. In such instances, entitlement to cooperative compensation offered through the MLS would be a question to be determined by an arbitration hearing panel.

MLSs, at their discretion, may adopt rules and procedures enabling listing brokers to communicate to potential cooperating brokers that gross commissions established in listing contracts are subject to court approval, and that compensation payable to cooperating brokers may be reduced if the gross commission established in the listing contract is reduced by a court.

MLSs must give participants the ability to disclose to other participants any potential for a short sale and may, as a matter of local discretion, require participants to disclose potential short sales. In any instance where a participant discloses a potential short sale, they may also be permitted to communicate to other participants how any reduction in the gross commission established in the listing contract required by the lender as a condition of approving the sale will be apportioned between listing and cooperating participants. All confidential disclosures and confidential information related to short sales, if allowed by local rules, must be communicated through dedicated fields or confidential "remarks" available only to participants and subscribers.

ⓘ MORE INFORMATION

For an example of model MLS rules from NAR, see www.realtor.org/handbook-on-multiple-listing-policy/model-governance-provisions/f-model-rules-and-regulations-for-an-mls-separately-incorporated-but-wholly-owned-by-an-association.

Real Estate Signs

In this age of modern technology the real estate profession continues to rely on an old-fashioned method of marketing: the real estate sign. Signage, of course, is regulated by the state, local municipalities, the Code of Ethics and the REEB.

Lawn signs

Lawn signs traditionally suggest to the public and other licensees that the broker placing the sign has an active listing. Historically, a listing contract was required to provide real estate brokerage services and to advertise. However, due to the 2006 modifications to Wisconsin brokerage law, a broker may provide brokerage services without a

client or subagency relationship on a pre-agency basis per Wis. Stat. § 452.134(1). A licensee only needs an agency agreement prior to negotiating on behalf of the party in a real estate transaction; it is not required for advertising provided other advertising rules are met. Presuming there is owner consent, preferably in writing to meet the Wis. Admin. Code § REEB 24.08 requirements, an agent could advertise a property without a listing contract.

However, a recent REEB disciplinary decision emphasizes that any ability to advertise, with or without a listing, is still subject to the basic rules against deceptive advertising. In that case, a "house-shaped" sign that included the words "For Property Information" was noted on a foreclosed property. The contact information listed on the signage was salesperson's telephone number, but the salesperson did not have a listing contract for the property. The DSPS disciplinary decision found that the agent had violated Wis. Admin. Code § REEB 24.04(1): he had advertised in a manner that was false, deceptive or misleading by placing signage with his contact information in front of a property prior to obtaining a listing contract.

REALTOR® Practice Tip

A listing contract may not be required in pre-agency and advertising may be allowed, but the trick is to not advertise in a manner that is false, deceptive or misleading. The public typically assumes any real estate sign they see means the property is listed.

SOLD signs

After receiving complaints regarding the improper use of sold signs in the 1990s, the Real Estate Board of the Department of Regulation and Licensing (REB) adopted an interpretation of the rule against misleading advertising (Wis. Admin. Code § RL 24.04) that sold signs could only be put on a property after the transaction closed. On further consideration, the REB proposed a rule allowing sold signs and other signs that would have the result of slowing or stopping sales activities on the property to be posted only after all contingencies are cleared and if the seller approved. It was finally decided not to adopt a new rule but to rely on the misleading advertising rule. In the 1990s, it was expected that enforcement of § RL 24.04 would follow the lines then set by the REB: a sold or similar sign may be posted only when all contingencies have been met or removed and the seller has given approval knowing that it means the property will be off the market.

Times have changed, and different people populate the REEB and the DSPS. One current goal of regulated real estate is to promote transparency for consumers. Under current standards and interpretations, and depending upon the facts and circumstances, if the information on a sign suggests to the public that the property is sold when the transaction has not closed, the practice may arguably be misleading advertising in violation of license law and the Code of Ethics. Wis. Admin. Code § REEB 24.04(1) requires that advertising not be false, deceptive or misleading. Article 12 of the Code of Ethics requires REALTORS® to be careful to present a true picture in their advertising and representations to the public. Before the closing, it may be more appropriate to use a sign or sign riders that say "contract pending," "accepted offer" or similar language that is more reflective of the actual status of a transaction awaiting closing.

State regulation of signs

The Wisconsin Department of Transportation (DOT) enforces the laws that prohibit signs in highway right-of-way and regulates the placement of signs on private property that are viewable from state and federal highways. A "highway" includes all public ways, thoroughfares and bridges.

An annual license fee of $250 is required of any person or company that erects more than two signs, whether on premise or off property, in Wisconsin in a calendar year. "Off property" refers to signs located off the site from the business being advertised. Persons erecting signs advertising their own business are exempt from the annual license fee. In addition, a permit is required to erect and maintain an outdoor advertising sign on private lands if the sign is adjacent to a state-controlled highway. The interstate system, federal aid primary or national highway system, and the Great River Road are referred to as "controlled highways." A non-refundable permit application fee of $175 is required for most types of signs. The permit stays in effect as long as the sign continues to meet legal requirements. Other annual fees may also apply.

Certain real estate signs exempt from permits and fees

The good news, however, is that real estate signs on the property for sale of 32 square feet or less, except along interstates, are exempt. A real estate sign means a sign advertising the sale or lease of land upon which it is located or of a building on that land. A real estate sign that is erected along an interstate highway may be subject to the permit requirement and the $250 fee, but per Wis. Admin. Code § Trans 201.17 (docs.legis.wisconsin.gov/code/admin_code/trans/201/17), a real estate sign that is erected along a controlled highway other than an interstate highway is exempted from the permit requirement if all of the following conditions are satisfied:

(a) The sign does not exceed 32 square feet in surface area.

(b) There is no more than one real estate sign on the property facing each direction of travel for each controlled highway from which a sign on the property is visible.

(c) The sign does not contain flashing lights or moving parts.

(d) The sign is not erected in a location where it constitutes a traffic hazard.

(e) The sign is not erected until the property is actually offered for sale or lease, and is removed within seven days after the property has been sold or leased.

Sign placement

Wisconsin law prohibits the placement of signs on any rural or urban portion of the state highway system right of way. This prohibition applies to commercial advertising and also covers other signs, posters and banners. As a general rule, highway right of way in rural areas extends to beyond both shoulders and ditches and any adjoining fence line.

Real estate, campaign and other temporary signs must be placed on private property. Since highway right-of-way limits can vary greatly in width, look for fences parallel to the road or for utility pedestals and poles. These items are usually placed near the right-of-way limits. Utilities are often installed just inside the right-of-way limit. Signs are not allowed in the area between the utility poles and the road surface. Signs are NOT allowed within highway medians.

In urban areas, boulevard medians and the terrace area between any sidewalk and the street are part of the highway and therefore off-limits for installation of signs of any type. Signs must be at least 15 feet from the pavement edge if there is no sidewalk; signs are prohibited from the roadway area to at least one foot past the sidewalk when there is a sidewalk.

ⓘ MORE INFORMATION

See the Wisconsin DOT's Improperly Placed Signs on Highway Right-Of-Way brochure at wisconsindot.gov/Documents/doing-bus/real-estate/outdoor-adv/improperly-placed-signs-brochure.pdf and the information at wisconsindot.gov/Pages/doing-bus/real-estate/outdoor-adv/political.aspx.

Sign removal

County highway maintenance workers will remove signs found within state highway right of way. Signs that pose a safety hazard will be removed immediately. Highway crews are asked to make reasonable attempts to preserve signs that are removed and to provide the sign owner with an opportunity to claim the signs.

Wis. Stat. § 86.19(3) provides that any person who shall erect any sign on any public highway, or without the written consent of the DOT if the sign is to be erected on a state trunk highway, the county highway committee in the case of a county trunk highway, or the city council, village or town board in case of a street or highway maintained by a city, village or town, shall be fined not less than $10 nor more than $100, and for a second or subsequent violation shall be fined not less than $10 nor more than $500. See Wis. Stat. § 86.19 at docs.legis.wisconsin.gov/statutes/statutes/86/19.

ⓘ MORE INFORMATION

For questions, contact the local DOT regional outdoor advertising program coordinators. See the directory and contact information at wisconsindot.gov/Pages/doing-bus/real-estate/outdoor-adv/coordinators.aspx.

Local ordinances

Most counties and municipalities also have regulations or ordinances regarding signage in their jurisdiction. It is the sign owner's responsibility to follow local rules. State approval of a sign does not exempt the licensee from any local ordinances or guarantee approval from the local authority having jurisdiction. Likewise, local approval does not guarantee or exempt approval from the state. The following are some examples that illustrate the restrictions imposed by some Wisconsin municipalities.

City of New Richmond

Model home and open house signs shall be permitted in residential and commercial zones under the following conditions:

- Signs shall not be larger than 4 square feet in area.
- Signs shall be placed no sooner than two hours before the initial time and date of the model home/open house is to open to the public and shall be removed within two hours after the closing of the model home/open house.
- Signs are to be removed on a daily basis.
- No sign shall be displayed more than four consecutive days.
- Signs must be placed on the building side of the sidewalk, and if there is no sidewalk, the sign must be placed 11 feet from the curb.
- Signs shall not be placed on traffic controls, signal devices or utility poles.
- A permit shall be required and there shall be an annual registration fee of $50.00 per real estate agent or $100.00 for a real estate agency. This permit is valid for 12 months from the date of issuance. There shall be a $1.00 fee for a sign sticker and this sticker shall be valid for the life of the sign.

See www.newrichmondwi.gov/index.asp?SEC=4937EE24-6319-4E88-B69E-DCCEF265832A&Type=B_BASIC.

City of Madison

Real estate signs advertising only the sale, rental or lease of the premises upon which the sign is located and displayed temporarily only during times when the premises/property is being offered for sale, rental or lease are exempt from permit, if they are not more than 12 square feet in residential, agricultural, conservancy districts. The signs can be up to 32 square feet in commercial areas. Additionally, in most districts, if the lot fronts a highway with a speed limit of more than forty-five 45 miles per hour, a real estate sign of up to 64 square feet in net area may be displayed.

See "Chapter 31 — Sign Control Ordinance" online at www.municode.com/library/wi/madison/codes/code_of_ordinances for additional restrictions and details.

City of Greenfield

- In residential districts signs shall not exceed 6 square feet in area and 6 feet in height. A permit is NOT required.
- Signs shall be set back a minimum of 5 feet from front or side lot line.
- Premises or vacant land for sale, lease or rent may have one

temporary freestanding, wall or window sign on each street that the development abuts. The signs must be placed on the property being sold, leased, or rented.

- Sign must be removed within seven days of sale.
- Real estate signs shall not be illuminated.

Whitefish Bay

One real estate sign is allowed on any lot or parcel provided such sign is located entirely within the property to which the sign applies and is not directly illuminated. Such sign shall advertise only the premises upon which the sign is located, for sale or rent, and the name, address and telephone number of the owner or agent and shall be constructed in a neat and workmanlike manner and in compliance with the following:

In one- and two-family residential districts, such signs shall not exceed 6 square feet in area and shall be removed within 15 days after the sale, rental or lease has been accomplished. Flags and pennants used in connection with advertising are not allowed and only one sign is permitted per parcel.

New video: are your signs legal?

Can you put up open house signs on the side of the road? One community tried to restrict some signs, but the U.S. Supreme Court slapped down its rule. The ordinance could have set a troubling precedent for real estate signs. Hear about that and more in The Voice for Real Estate. View the video at www.realtor.org/videos/the-voice-for-real-estate.

Telephone Solicitation Law

The Do Not Call laws governing calls made by REALTORS® in Wisconsin come from both the federal and the state level.

The national do not call rules

The Federal Trade Commission (FTC) in the Telemarketing Sales Rules regulates both interstate telephone solicitations and the National Do Not Call Registry, while the Federal Communications Commission (FCC) regulates both intrastate and interstate calls including calls made within Wisconsin. A "telephone solicitation" is a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods or services, which is transmitted to any person. Such calls to a consumer's residence or cell phone that encourage the purchase, rental or investment in property, goods or services are regulated under federal law. For REALTORS®, this generally includes cold calling, calls to owners with cancelled or expired listings, calls to FSBOs and calls to consumers referred by others. REALTORS® placing these calls should check whether the phone number is on the National Registry, if an exception does not apply, in order to avoid potential liability. Penalties for violating the federal no-call law include civil penalties of up to $16,000 per violation, injunctive relief, lawsuits seeking damages plus possible attorney's fees and costs, and REEB disciplinary actions.

Exemptions to the national do not call registry provisions

The exemptions to the federal Do Not Call rules include calls from political organizations, charities, telephone surveyors or companies with which a consumer has an existing business relationship, and calls made with prior permission.

The established business relationship exemption

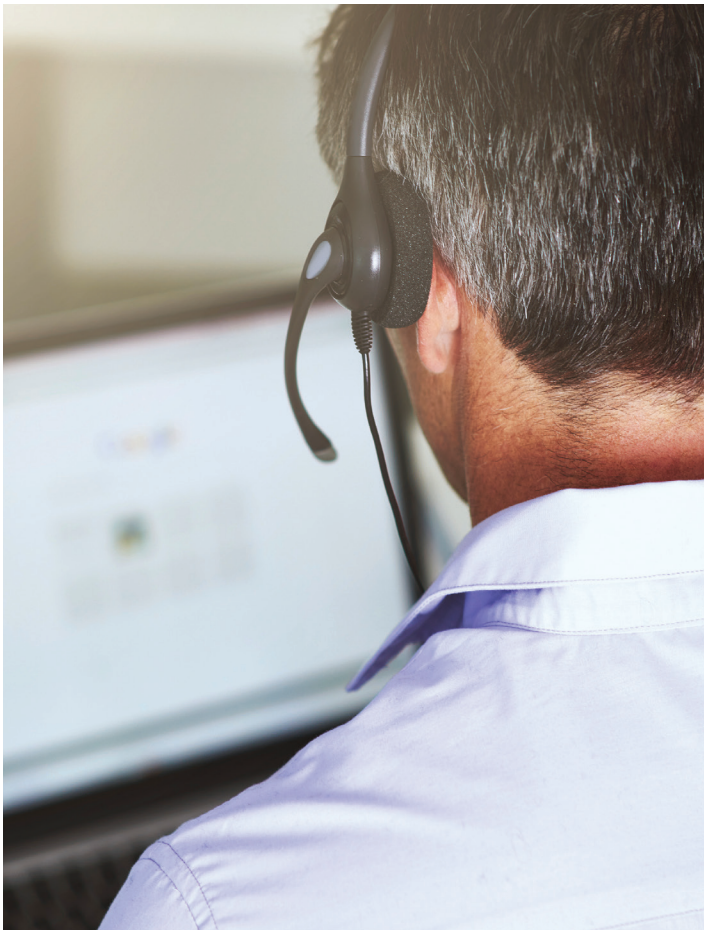
Sellers and telemarketers may call a consumer with whom a seller has an established business relationship, provided the consumer has not asked to be on the seller's entity-specific Do Not Call list. The rules state two kinds of established business relationships:

1. One is based on the consumer's purchase, rental or lease of the seller's goods or services, or a financial transaction between the consumer and seller, within 18 months preceding a telemarketing call. The 18-month period runs from the date of the last payment, transaction or shipment between the consumer and the seller.
2. The other is based on a consumer's inquiry or application regarding a seller's goods or services, and exists for three months starting from the date the consumer makes the inquiry or application. This enables sellers to return calls to interested prospects even if their telephone numbers are on the National Do Not Call Registry.

The written permission to call exemption

The rules allow sellers and telemarketers to call any consumer who expressly agrees, in writing, to receive calls by or on behalf of the seller, even if the consumer's number is in the National Do Not Call Registry. The consumer's express agreement must be in writing, and include the consumer's signature and the number to which calls may be made. The signature may be a valid electronic signature, if the agreement is reached online.

If a seller seeks a consumer's permission to call, the request must be



clear and conspicuous, and the consumer's assent must be affirmative. If the request is made in writing, it cannot be hidden; printed in small, pale, or non-contrasting type; hidden on the back or bottom of the document; or buried in unrelated information where a person would not expect to find such a request. A consumer must provide consent affirmatively, such as by checking a box. For example, a consumer responding to an email request for permission to call would not be deemed to have provided such permission if the "please call me" button was pre-checked as a default.

If a telephone solicitation call does not fall within any of the exceptions, a caller should check the registry and no-call lists, or decline placing the call in order to avoid the risk of enforcement action or penalty under federal law.

Compliance safe harbor

A safe harbor provision exists in the rules for a business that inadvertently calls a consumer who is registered in the Do Not Call registry. A business will not be liable if it can demonstrate that the call was made as the result of error. In order to demonstrate that the call was made as a result of error, the business will need to show the following regular business practices: written procedures for compliance with the rules; train personnel in compliance with the rules; maintain a list of numbers that should not be called; update its no-call list at least every 31 days; and assure that the no-call list is not used for any other purpose other than the business's compliance with the rules. See www.realtor.org/law-and-ethics/complying-with-federal-regulations/do-not-call-registry/safe-harbor-provision.

National do not call registry

Pursuant to its authority under the Telephone Consumer Protection Act (TCPA), the FCC established, together with the Federal Trade Commission (FTC), the National Do Not Call Registry. The registry is nationwide in scope, applies to all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls. Commercial telemarketers are not allowed to call a number that is on the registry, subject to certain exceptions. Consumers can register their home and cell phone numbers for free and the registration does not expire; numbers are removed only if the number is disconnected and reassigned or if the consumer asks that it be removed.

The national registry can be accessed at telemarketing.donotcall.gov. Up to five area codes can be accessed for free. Effective October 1, 2014, the annual fee is $60 per area code of data (after five) up to a maximum annual fee of $16,482.

MORE INFORMATION

See "Complying with the Telemarketing Sales Rule" at www.ftc.gov/tips-advice/business-center/guidance/complying-telemarketing-sales-rule.

The entity-specific do not call provision

It is a rule violation to call any consumer who has asked not to be called again. Calling a consumer who has asked not to be called

potentially exposes a seller and telemarketer to a civil penalty of $16,000 per violation.

ⓘ MORE INFORMATION

See www.realtor.org/law-and-ethics/complying-with-federal-regulations/do-not-call-registry/creating-an-office-policy.

See NAR's Field Guide to Do-Not-Call and Do-Not-Fax Laws at www.realtor.org/field-guides/field-guide-to-do-not-call-and-do-not-fax-laws for further information and compliance pointers.

DATCP telephone solicitation rules

A "telephone solicitation" is defined by the Wisconsin Department of Agriculture, Trade and Consumer Protection as an unsolicited initiation of a telephone conversation or text message for the purpose of encouraging the recipient of the telephone call or text message to purchase property, goods or services. No individual may make a telephone solicitation to a Wisconsin residential customer unless the individual has a telephone solicitor registration, and the telephone number is not on the no-call list or the call fits within an exemption.

There are categories of calls that brokers can make that are not classified as "telephone solicitations." These exceptions include telephone calls made:

- In response to the consumer's affirmative request for that call. Under federal law, a broker may legally call in response to a direct consumer inquiry or application within the last three months or with prior written permission from the consumer. A failure to respond to a negative option, such as "we will call unless you say no," is not an "affirmative request."
- A telephone call made to a current client. A current client is a person who has a current agreement to receive, from the caller or the person on whose behalf the call is made, property, goods or services of the type promoted by the telephone call. Under federal law, a broker may legally call if there is an established business relationship with the consumer arising from a current business transaction, a purchase or transaction with the consumer within the last 18 months or arising from a direct consumer inquiry or application within the last three months, or with the prior written permission from the consumer.
- A telephone call made by an individual acting on his or her own behalf, not as an employee or agent for any other person.
- A telephone call made to a number listed in the current local business telephone directory.
- One telephone call to determine whether a former client mistakenly allowed a contractual relationship to lapse.
- A telephone call made to determine a former client's level of satisfaction, unless the call is part of a plan or scheme to encourage the former client to purchase more property, goods or services. There is a risk of the call later being classified as a telephone solicitation if it is deemed to be part of a scheme or plan to sell.

No agent may make a "telephone solicitation" call to any telephone number on the Do Not Call list, even if an agent is making a follow-up call to a party in a transaction unless the call falls under one of the "telephone solicitation" exceptions.

Telephone solicitors registering with the DATCP are required to subscribe to the National Do Not Call Registry, maintained by the U.S. Federal Trade Commission (FTC) at telemarketing.donotcall.gov. Effective August 1, 2014, the Wisconsin Do Not Call Registry is the portion of the National Do Not Call Registry that consists of telephone numbers with Wisconsin area codes. Numbers on the Wisconsin no-call list were automatically transferred to the federal list.

Effective August 1, 2014, registration on the Wisconsin Do Not Call Registry is permanent. Wisconsin residents no longer have to sign up every two years. Consumers may sign up once, and they are done, as long as they have that number.

Do not text

Wisconsin law protects cell phone users from unwanted texts. If a cell phone number is on the Do Not Call Registry, unsolicited text sales pitches are illegal. The same exceptions apply to texting that apply to solicitation calls.

See the DATCP's Wisconsin Do Not Call Registry brochure at datcp.wi.gov/uploads/Consumer/pdf/NoCall-TelemarketerFAQ287.pdf and the Wisconsin Telephone Solicitor Registration and fee materials at datcp.wi.gov/uploads/Consumer/pdf/NoCallTelemarketerRegistrationPacket289.pdf. Businesses that unlawfully call numbers on the Wisconsin Do Not Call Registry will be in violation of Wisconsin's Do Not Call laws and will be subject to the maximum penalty of a $100 forfeiture for every violation.

ⓘ MORE INFORMATION

The Wisconsin Telemarketing Sales Rules are in Wis. Admin. Code ch. ATCP 127 and the Wisconsin Do Not Call Law is found in Wis. Stat. § 100.52. See Wis. Stat. § 100.52 at docs.legis.wisconsin.gov/statutes/statutes/100.pdf and Wis. Admin. Code § ATCP 127.80-127.84 at docs.legis.wisconsin.gov/code/admin_code/atcp/090/127.pdf.

Junk Fax Regulation

FCC rules under the Telephone Consumer Protection Act and the Junk Fax Prevention Act prohibit most unsolicited fax advertisements. Fax advertisements may be sent to recipients with whom the sender has an established business relationship (EBR), as long as the fax number was provided voluntarily by the recipient. A fax advertisement may be sent to an EBR customer if the sender also obtains the fax number directly from the recipient, obtains the fax number from the recipient's own directory, advertisement or site on the Internet, or has taken reasonable steps to verify that the recipient consented to have the number listed, if obtained from a directory or other source of information compiled by a third party.

Permissible fax advertisements must provide notice and contact information on the fax that allow recipients to opt-out of future faxes. The notice must:

- Be clear and conspicuous and on the first page of the

advertisement.

- State that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful.
- Include a telephone number, fax number, and cost-free mechanism — including a toll-free telephone number, local number for local recipients, toll-free fax number, website address or email address— to opt-out of faxes, which must be available 24 hours a day, seven days a week.

Senders must honor requests not to send further faxes within 30 days. They are also prohibited from sending future fax advertisements unless the recipient subsequently provides prior express permission.

ⓘ MORE INFORMATION

See the August 2005 *Legal Update*, "Federal Laws Impacting REALTOR® Practice," at www.wra.org/LU0508, FCC Junk Faxes at www.fcc.gov/guides/fax-advertising and NAR's Field Guide to Do-Not-Call and Do-Not-Fax Laws at www.realtor.org/field-guides/field-guide-to-do-not-call-and-do-not-fax-laws for further information and compliance pointers.

Hotline Questions and Answers about Real Estate Advertising

What are the rules and regulations for posting listings on Craigslist?

A broker's advertising in any media, including Craigslist, will be subject to compliance with Wis. Admin. Code § REEB 24.04, Article 12 of the Code of Ethics, company policy and copyright law.

Article 12 of the Code of Ethics provides, "REALTORS® shall be careful at all times to present a true picture in their advertising and representations to the public. REALTORS® shall also ensure that their professional status (e.g., broker, appraiser, property manager, etc.) or status as REALTORS® is clearly identifiable in any such advertising. (Amended 1/93)"

Wis. Admin. Code § REEB 24.04 provides:

"(1) FALSE ADVERTISING. Licensees shall not advertise in a manner which is false, deceptive, or misleading.

(2) DISCLOSURE OF NAME. (a) Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party. (b) Except for advertisements for the rental of real estate owned by the licensee, a licensee employed by a broker shall advertise under the supervision of and in the name of the employing broker. (c) A licensee may advertise the occasional sale of real estate owned by the licensee or the solicitation of real estate for purchase by the licensee without complying with pars. (a) and (b), provided that the licensee clearly identifies himself, herself or itself as a real estate licensee in the advertisement.

(3) ADVERTISING WITHOUT AUTHORITY PROHIBITED. Brokers shall not

advertise property without the consent of the owner.

(4) ADVERTISED PRICE. Brokers shall not advertise property at a price other than that agreed upon with the owner; however, the price may be stated as a range or in general terms if it reflects the agreed upon price."

ⓘ MORE INFORMATION

Review "Best of the Legal Hotline: The Code of Ethics and the Internet" in the October 2007 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Oct07/CodeOfEthics-Internet and "Best of the Legal Hotline: Real Estate Practice in the Electronic Age" in the January 2008 *Wisconsin Real Estate Magazine* at www.wra.org/WREM/Jan08/ElectronicAge. For general advertising information, see the February 2006 *Legal Update*, "Real Estate Advertising," at www.wra.org/LU0602.

Can a mortgage banker and a real estate broker advertise their services together, for example, on the same brochure or newspaper advertisement?

RESPA does not prevent joint advertising between two settlement service providers, such as a mortgage banker and a real estate broker, advertising their services on the same brochure, newspaper advertisement or website. However, each advertising party must pay for his or her share on a proportionate basis. If a real estate broker equally shares advertising space with a mortgage banker, each party must pay 50 percent of the advertisement cost. Paying more than the pro rata share can be considered by the Department of Housing and Urban Development (HUD) as "accepting a thing of value" for the referral of business, which is a violation of RESPA's Section 8 anti-kickback

MORE INFORMATION

For more information about RESPA, see the November 2006 *Legal Update*, "RESPA and the Real Estate Broker" at www.wra.org/LU0611 and the resources at www.hud.gov/offices/hsg/ramh/res/resindus.cfm.

The broker has a listing where one of the previous owners was a famous Green Bay Packers player. Can the broker advertise with the player's name and include Packers logos and colors in the ad?

Wis. Stat. § 995.50 is the Wisconsin right to privacy statute. An invasion of privacy occurs if one uses, without prior written consent and for advertising purposes, the name, portrait or picture of any living person. The right to privacy is personal in nature, and a broker may not use the name or image of the buyer without consent. In regards to the use of the Green Bay Packers logo, that could raise trademark issues. The use of the Packers colors and general references to "green and gold" may be acceptable. It would be best to have the ad reviewed by legal counsel just to be sure rather than draw the displeasure of the Green Bay Packers organization. See the statute at docs.legis.wisconsin.gov/statutes/statutes/995/50.

Sources

For additional advertising and marketing resources, visit the following sites:

- NAR Field Guide to Marketing Tips for REALTORS®: www.realtor.org/field-guides/field-guide-to-marketing-tips-for-realtors.
- NAR Field Guide to Effective Online Marketing: www.realtor.org/field-guides/field-guide-to-effective-online-marketing.
- NAR Field Guide to Do Not Call and Do Not Fax Laws: www.realtor.org/field-guides/field-guide-to-do-not-call-and-do-not-fax-laws.
- FTC Advertising FAQs: A Guide for Small Business: www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business.
- Who Owns Your Property Photos? www.realtor.org/law-and-ethics/who-owns-your-property-photos.

Watch the Legal Update Video Online:

EDITORIAL STAFF

Author
Debbi Conrad

Production
Lauren B. Hubbard

ASSOCIATION MANAGEMENT

Chairman
K.C. Maurer

President & CEO
Michael Theo, CAE

CONTACT INFORMATION

Wisconsin REALTORS® Association
4801 Forest Run Road, Suite 201
Madison, WI 53704
608-241-2047
800-279-1972

LEGAL HOTLINE

Ph: 608-242-2296
Fax: 608-242-2279
Web: www.wra.org

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Madison, WI 53704-7337

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