

Know What Your Agents Are Doing – Online

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What Are the Rules?

An agent's creation and maintenance of a Web site, Internet advertising and other electronic communications will need to meet the standards found in the Wisconsin Administrative Code, the Code of Ethics, MLS rules and copyright law, as well as office policies. Article 12 of the Code of Ethics and the corresponding Standards of Practice have been recently modified to clearly address REALTOR® communications in our electronic age.

The National Association of REALTORS® believes that REALTORS® must be honest and truthful in all real estate communications. This includes information shared with customers, clients and the public, whether in person, in print or on the Internet. The Code of Ethics now clearly applies regardless of the media employed.

Code of Ethics Article 12

REALTORS® shall be honest and truthful in their real estate communications and shall present a true picture in their advertising, marketing and other representations. REALTORS® shall ensure that their status as real estate professionals is readily apparent in their advertising, marketing and other representations, and that the recipients of all real estate communications are, or have been, notified that those communications are from a real estate professional. (Amended 01/08)

The modifications to Article 12, illustrated in the corresponding Standards of Practice, provide that REALTORS® must be honest and truthful in real estate communications. Their advertising must portray a true picture and identify them as real estate professionals regardless of whether the communication is in person or electronic.

Additionally, four Standards of Practice were adopted in 2007 relating to REALTOR® activity on Web sites. According to Standard of Practice 12-10, REALTORS® may not:

A broker's supervision responsibilities include, under Wis. Admin. Code § RL 24.04(2)(b), monitoring all agents' real estate related advertising and communications, whether in person or in cyberspace.

1. Engage in deceptive or unauthorized framing of real estate brokerage Web sites.
2. Manipulate listing content in a way that produces a deceptive or misleading result.
3. Deceptively use metatags, keywords or other devices/methods to direct, drive or divert Internet traffic or to otherwise mislead consumers. (Adopted 1/07)

In addition, Standard of Practice 12-9 requires REALTORS® to disclose the name of the REALTOR'S® firm in a reasonable and readily apparent manner in any advertising medium (e.g., electronic, print, radio, television, etc.). Also, Standard of Practice 12-8 requires REALTORS® to use reasonable efforts to ensure that all information on their Web sites is current. Rounding out the changes, Standard of Practice 12-11 requires a REALTOR® to disclose, in a reasonable and readily apparent manner the REALTOR'S® intent to share or sell consumer information gathered from the Internet.

A complete copy of the Code of Ethics can be downloaded from www.wra.org/CodeofEthics. Agents may give Web designers a copy of Article 12 and the corresponding Standards of Practice to make sure their designers create

and maintain their Web sites in compliance with the Code of Ethics requirements.

Broker Supervision Obligations

The obligations of the Code of Ethics correspond with and build upon Wisconsin license law obligations. Wis. Admin. Code § RL 24.04 provides, in part, that advertising must not be false, deceptive or misleading and must be in the name of the broker. Although the obligations of the Code of Ethics are personal to each REALTOR®, brokers are responsible by license law to supervise each employed licensee's activity.

Agents work on behalf of the broker owner of the real estate company. A thorough review of advertising takes into consideration license law and the Code of Ethics, as well as MLS rules and copyright law. The advertising rules may be found in the Wisconsin Administrative Code at www.legis.state.wi.us/rsb/code/rl/rl024.pdf and www.legis.state.wi.us/rsb/code/atcp/atcp114.pdf.

MLS Rules

When a broker or agent wishes to advertise another broker's listings, permission of the seller and listing broker are required. The IDX rules adopted by the local MLS are one source of such permission. Brokers should obtain a copy of the local MLS rules and keep them readily available in the office for agents and their Web designers to review when working on Web design. Recent changes in MLS policy approved by NAR leadership authorize the MLS to impose financial penalties up to \$15,000 on participants or subscribers as discipline for violations of MLS, so it is ethically and financially worthwhile to avoid MLS rule violations.

Office Policy

Prudent office policy would include review of agents' advertising, communications, URLs and domain names for compliance with the law and Code. In addition, office policy can add additional requirements for advertising, Web site

maintenance and communications. For example, office policy may require agents to display contact numbers, addresses, any information required by a franchise and Equal Opportunity in Housing slogans or logos. Moreover, company policy sets the procedures for broker review and correction of agent advertising when violations of the law or the Code of Ethics are discovered. If an agent uses or owns a domain name or URL containing the broker's name or company name, the broker may consider how to address the ownership and use upon agent termination.

Copyright Law

Brokers must be vigilant to ensure their agents do not engage in copyright infringement. The most frequent area of misuse relates to the use of photographs taken by other brokers or photographers hired by a broker or agent. Copyright rights vest in the photographer, and reproduction of another person's photographs requires the permission of the copyright owner/photographer.

The use of photographs submitted to the MLS is limited and subject to the MLS terms and conditions of use. For example, an agent may share a photo of a currently listed property with a potential buyer. However, when taking a new listing, the new agent may not use the photo from a previous broker. Brokers hiring photographers to do their photos should be sure to obtain the proper permission to use the photos and reproduce them either in print media, on the Internet or in the MLS. The broker should be able to document the right to use and display the photos by a written documentation of that authority. More information is available in the June 2004 edition of the *REALTOR® Magazine Online* at www.realtor.org/rmomag.NSF/pages/lawjune04. Also see www.copyright.gov for information from the United States Copyright office.

Domain Names

"REALTOR®" is a registered trade name and must be used in compliance with NAR policy. The

term REALTOR® is used to designate a member of the NAR, not simply a real estate broker. It is important to not use this term in a manner that confuses the public and makes them think that the term "REALTOR®" is synonymous with "real estate broker" or "real estate agent."

A new Standard of Practice has been adopted for 2008. REALTORS® shall not:

1. Use URLs or domain names that present less than a true picture
2. Register URLs or domain names that, if used, would present less than a true picture. (Adopted 01/08)

The term REALTOR® may be used in a domain name with the agent's name but cannot be used with descriptive words or phrases. For example, *bestrealtor.com* would be inappropriate but *raysmithrealtor.com* would comply with NAR policy. The *Membership Marks Manual* contains examples of the use of "REALTOR®" in domain names at www.realtor.org/letterlw.nsf/pages/mmmPartTwo#TwoIII.

Craigslist

Many questions have been raised about licensees' use of Craigslist and similar Web sites to advertise property and generate business leads. The most frequent question is whether an agent needs to disclose his or her real estate license on Craigslist. The answer is yes. The failure to advertise in the name of the broker and disclose that the REALTOR® is a real estate professional violates both the Wisconsin Administrative Code and the Code of Ethics.

For more information on this topic, see "Real Estate Practice in the Electronic Age," in the January 2008 issue of *Wisconsin Real Estate Magazine*.