

Advertising

The Idaho Real Estate Commission receives many advertising complaints every month. Most of these complaints come from within the industry, from competitors that know the laws and expect everyone to follow them.

The Commission is more interested in obtaining compliance with the advertising laws than initiating discipline for violations. This Guideline discusses the advertising requirements applicable to licensees under the Idaho Real Estate License Law and enforced by the Commission.

This Guideline will not delve into trade association codes, franchise requirements, Federal regulations, or the Idaho Consumer Protection Act provisions governing advertising. It is limited in scope to the Idaho Real Estate License Law. Readers should look elsewhere for assistance and enforcement of these other regulations.

The License Law's advertising requirements are simple and are presented here in their entirety:

54-2053.ADVERTISING. (1) Only licensees who are actively licensed in Idaho may be named by an Idaho broker in any type of advertising of Idaho real property, may advertise Idaho property in Idaho or may have a sign placed on Idaho property.

(2) All advertising of listed property shall contain the broker's licensed business name. A new business name shall not be used or shown in advertising unless and until a proper notice of change in the business name has been approved by the commission.

(3) All advertising by licensed branch offices shall contain the broker's licensed business name.

(4) No advertising shall provide any information to the public or to prospective customers or clients which is misleading in nature. Information is misleading if, when taken as a whole, there is a distinct probability that such information will deceive the persons whom it is intended to influence.

The first three subsections, or points, are clear and easy to apply. The restriction contained in point (1) means that, when it comes to property located in Idaho, only the names of **Idaho** licensees may appear in an ad or sign, and unlicensed staff may not be named in advertising.

Point (2) applies to advertising of listed property, and requires that the **licensed** name of the brokerage be in the advertisement, including MLS; a team name is not sufficient. It also requires that a new brokerage, or an existing brokerage wishing to change its name, wait until the application for licensure or name change is made effective (i.e., processed and approved) by the Commission before beginning to advertise.

Point (3) applies to licensed branch offices, and requires that the designated broker be named in advertising; the name of the managing broker or team name is not sufficient.

Point (4), the prohibition against advertising that is “misleading to the public,” is not as black-and-white in its application and requires some interpretation. Below is a list of situations the Commission considers misleading. This list is not intended to be all inclusive, but notes the most common violations seen:

- The actual licensed name of the brokerage is missing. While point (2) already requires the licensed name in ads for listed property, point (4) applies to all advertising and includes: cards, automobiles, billboards, radio, MLS data and flyers, television, websites, printed ads, online ads, ads that direct consumers to a website, and every other form of advertising in existence. If the licensed name of the brokerage is not in the ad, then the ad is misleading.
- Advertising a subdivision as having homes starting at a low price, when in fact no homes ever were, or no longer are, available at that price.
- A franchise name alone is advertised. The franchise name is only a part of the licensed brokerage name. The name “Franchise Brokerage” is not the same name as “Franchise Brokerage of Greater Atomic City, Idaho.” Advertisements must contain the complete licensed name.
- An abbreviation is used in place of the licensed brokerage name.
- A company logo is used in place of the licensed brokerage name.
- Although the law requires licensees to conduct their personal transactions through the brokerage they are licensed with, it does not require that they employ the services of that brokerage. Licensees are allowed to offer personally-held real property “by owner.” However, such an ad is misleading unless it includes the term “Owner/Agent” or some other disclosure that the seller holds an active Idaho real estate license.
- Placing ads as an individual licensee or brokerage before actual issuance of the license(s) (gambling that the license(s) will be issued before the ads are published).
- Placing the name of the brokerage in an advertisement, but doing so in a way that is not obvious to a consumer. Some examples are in order here:
 1. Brokerage name in a brochure or newspaper ad is so small a magnifying glass is required to read it
 2. Brokerage name on a sign cannot be easily read at the posted speed limit
 3. Posting a “team” name prominently, while concealing the actual name of the brokerage (perhaps using grey lettering on a grey background that requires a search to reveal the brokerage)

Questions also have arisen concerning a licensee’s advertising that a portion of the sales commission goes to charity. The Commission takes the position that a licensee may, consistent with the License Law, advertise that he or she will donate a portion of earned commissions to charity, even a specific charity, provided the following conditions are met:

- 1.) The designated broker is made aware in advance and condones this activity.
- 2.) The receiving charity does not act or participate in any manner that could be considered the procuring of prospects, or in any other activities that would require a license.

- 3.) The licensee must exercise reasonable care to ensure that any charity advertised is a bona fide nonprofit.
- 4.) All advertising of any charitable giving arrangement must clearly disclose the terms under which the donation will be made, and must otherwise comply with all laws regarding advertising.
- 5.) The donation must be made at the brokerage individual level, after closing. The donation is not permitted to be made from the escrow process.
- 6.) A full written disclosure must be made to all principals, lien holders, and new mortgage underwriters if one of the parties or licensees controls or benefits from the charity involved.

Designated brokers have additional responsibilities as far as advertising is concerned. Idaho Code 54-2038(3) prohibits brokers from allowing “any person who is not properly licensed to represent that broker as a sales associate or otherwise, in any real estate business activities requiring a real estate license.” This means that a broker may not advertise licensees until they are officially licensed at the brokerage. If placing “franchise” advertising, designated brokers should carefully check not to mingle their licensees and properties with those of another broker who is under the same franchise.

Idaho Code 54-2040(4) states that a broker shall not conduct business under any name other than the one in which the license is issued. In other words, once a broker has committed to a brokerage name, they must operate under that business name or change it.

Licensees should familiarize themselves with the advertising laws. Colleagues and consumers are watching. The Commission does not want to initiate disciplinary proceedings for these violations, we prefer compliance.