

ADVERTISING UNDER THE NEW REGULATIONS

BUFFALO NIAGARA ASSOCIATION OF REALTORS

**PRESENTED BY:
ANTHONY GATTO, ESQ.
DIRECTOR OF LEGAL SERVICES**

What is an advertisement

Promotion and solicitation related to licensed real estate activity, including but not limited to advertising via:

- mail
- telephone
- websites
- e-mail
- electronic bulletin boards
- business cards
- Signs/billboards
- Flyers
- Video

What is not an advertisement

Commentary made by a duly licensed real estate salesperson, real estate associate broker or real estate broker that is not related to promoting licensed real estate activity. 175.25(a)(1)

Statutory provisions

RPL § 441-c.

The Department of State may revoke the license of a real estate broker or salesperson or suspend the same, for such period as the department may deem proper, or in lieu thereof may impose a fine not exceeding \$1,000 payable to the Department of State...for dishonest or misleading advertising.

Statutory provisions cont.

GBL § 396-b

Any person, firm, corporation or association, or agent or employee thereof, hereinafter called person, who, being engaged in the business of dealing in any property, makes, publishes, disseminates, circulates or places... directly or indirectly...published, disseminated, circulated or placed before the public...any advertisement respecting any such property...unless it is stated in any such advertisement that the advertiser is a dealer in such property..

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.

Advertising Regulations

- Advertising Regulations found in 19NYCRR § 175.25
- New regulations effective January 2, 2014
- Only 'grace period' applies to team names

Changes to the regulations

- Internet advertising
- Use of logos by licensees or teams
- Team advertising
- Email

Advertising - generally

Only a real estate broker is permitted to place, or cause to be placed, advertisements.

Advertisements must provide the name of the real estate brokerage (or broker if individual broker) and either the brokerages:

- (i) full address or,
- (ii) telephone

Associated licensees

The advertisement may include the names of one or more associate real estate brokers or real estate salespersons associated with the real estate broker or brokerage placing the advertisement. Where an advertisement includes the name of an associate broker, real estate salesperson or a team, the name of the real estate broker and/or real estate brokerage must also be printed in the advertisement.

Nicknames

Licensees must advertise using the name under which they are licensed with the Department of State.

A nickname may be used in an advertisement provided that the full-licensed name is listed clearly and conspicuously.

Middle initials may be omitted so long as doing so is not misleading.

If pocket card and paper license do not match, you may use either.

License type

Advertisements shall correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. Licensees may abbreviate the type of license held, provided that such abbreviation is not misleading. The use of the titles, “sales associate”, “licensed sales agent” or simply “broker” is prohibited. Real estate brokers, associate real estate brokers or real estate salespersons who have additional titles or designations are permitted to advertise such titles or designations.

License type continued

- DOS has issued opinion that the term ‘Licensed’ is not required before the type of license so long as it is clear the individual is a licensed real estate broker, associate broker or salesperson.
- License type is not required in all advertisements but if a licensee is using a designation etc... the license type must appear

Contact information

An associate real estate broker, real estate salesperson or team may provide additional contact information, such as a post office box, in an advertisement.

Telephone numbers

Telephone numbers other than that of the brokerage may be used in an advertisement, provided that the advertisement clearly identifies the type of such other telephone number as desk, home, cell phone, or otherwise.

This does not trump the requirement that the brokerage phone number or address must be in every advertisement

Logos

Logo's different from that of the real estate brokerage with whom they are associated may be used provided that the name or logo of the real estate brokerage is also printed in the advertisement.

Property description

Must be honest and accurate description of the property.

Must list actual geographic location of property.

Use of a name to describe an area that would be misleading to the public is prohibited.

Miscellaneous

Home offices. A residence may be used as an office provided that it is properly licensed by the Department of State.

Guaranteed Profits. Advertisements shall not guarantee future profits from any real estate activity.

Teams

Two or more persons, one of whom must be an associate real estate broker or real estate salesperson, associated with the same real estate brokerage who hold themselves out or operate as a team.

Team names

Team names shall either: (i) include the full licensed name of the real estate brokers, associate brokers or real estate salespersons who are part of said team, or (ii) if the names are not included, the team name must be immediately followed by “at/of [full name of the broker/brokerage].” Team names shall use the term “team.” The use of any other terms besides “team,” such as “associate,” “realty” or “group” is prohibited. The use of the name of a non-licensed individual in a team name is prohibited.

Unlicensed team members

If any unlicensed individuals are named in advertising for a team, the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.

Classified advertisements

Classified and multi-property advertisements shall indicate that the advertiser is a real estate broker or brokerage; or provide the name of the real estate broker or real estate brokerage. Classified and multi-property advertisements may omit the license type of any associate real estate broker or real estate salesperson named in the advertisement.

Business Cards

Business cards must contain the business address of the licensee and the name of the real estate broker or real estate brokerage with whom the associate real estate broker or real estate salesperson is associated. All business cards must also contain the license type, office telephone number for the associate real estate broker, real estate salesperson or team

E-mail

An initial e-mail from a real estate broker, associate real estate broker, real estate salesperson or team to a client or potential client shall provide the information required by these rules and regulations. Such information may be omitted from subsequent e-mail communications to the same recipient.

For-Sale Signs

Notwithstanding subdivision (c)(1) of this section, unless otherwise prohibited by local law, any property listed through a real estate broker must be advertised as such, and any signage placed upon such property soliciting the sale or lease of the property must identify the representative broker or brokerage.

For-Sale Signs cont.

Open house or directional signs are not required to comply with the requirements of a For Sale sign.



For-Sale Signs cont.

If a team or licensee places their name on the directional or open house sign, the brokers name must also appear.



Web based advertising

Broker is responsible for the approval and supervision of all websites created and maintained by associated licensees where the purpose of the website is to promote a licensed activity in whole or in part.

Web based advertising cont.

Every page of such a website shall include the information required by these rules and regulations (Brokerage name and address or phone #).

In addition, a link to the broker or brokerage website with whom the associate broker, salesperson or team is associated is required on the homepage of the associate broker, salesperson or team website unless the broker or brokerage does not have a website.

Web based advertising cont.

Standard of Practice 12-9

REALTOR® firm websites shall disclose the firm's name and state(s) of licensure in a reasonable and readily apparent manner.

Websites of REALTORS® and non-member licensees affiliated with a REALTOR® firm shall disclose the firm's name and that REALTOR®'s or non-member licensee's state(s) of licensure in a reasonable and readily apparent manner.

Web based advertising cont.

Standard of Practice 12-10

REALTORS®' obligation to present a true picture in their advertising and representations to the public includes the URLs and domain names they use, and prohibits REALTORS® from: 1) engaging in deceptive or unauthorized framing of real estate brokerage websites; 2) manipulating (e.g., presenting content developed by others) listing content in any way that produces a deceptive or misleading result; or 3) deceptively using metatags, keywords or other devices/methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers.

Web based advertising cont.

Standard of Practice 12-12

REALTORS® shall not:

use URLs or domain names that present less than a true picture, or

register URLs or domain names which, if used, would present less than a true picture.

Web based advertising cont.

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Spindrift Realty, 15 Main St, Caravan, NY

Advertisements referencing property not listed with broker

Any advertisement that references or includes information about a property that is not listed with the advertising broker or was not sold by the advertising broker shall prominently display the following disclaimer: “This advertisement does not suggest that the broker has a listing in this property or properties or that any property is currently available.” Such advertisement: (i) shall not suggest, directly or indirectly, that the advertising broker was involved in the transaction and (ii) shall not refer to property currently listed with another broker absent consent provided pursuant to subdivision (b)(2)(b).

How can I advertise property not listed with me?

The title of this section is not what it appears to be!!

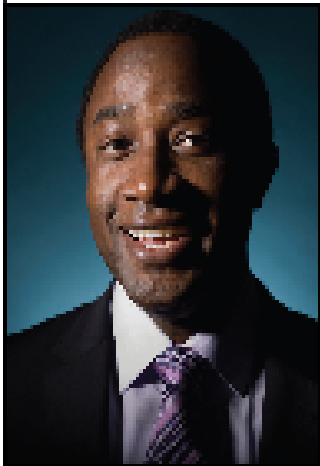
Refers to the ability of a licensee to advertise a condo or coop building or a planned unit development only!!

This does not permit a licensee to advertise a specific property without consent.

What about size?

- There is no regulation addressing size.
- DOS will look at advertisements as a whole.
- Reasonable person standard when viewing advertisement
- Misleading, dishonest

Galt Gets You to Sold!



Jonathon "Jon" Galt

Licensed Real Estate Salesperson

518-555-2112 (o) 518-555-2121(c)

jgalt@spindriftrealty.com



SPINDRIFT REALTY

15 Main Street

Caravan, NY 12345



Barchetta - \$305,000 - MLS #12345

Beautifully landscaped with a recently updated kitchen with granite countertops, this charming home has 3 bedrooms including a modern master suite, 2 full baths, 2-car garage and deck overlooking a 1/2-acre fenced well manicured yard. The spacious family room features brick fireplace with granite mantel.

Compliant: This example of a print advertisement that complies with all requirements of the regulations.

Galt Gets You to Sold!



Jonathon "Jon" Galt

Licensed Real Estate Salesperson
518-555-2112 (o) 518-555-2121(c)
jgalt@spindriftrealty.com

Non-compliant: This example of a print advertisement violates 19 NYCRR§175.25 c(1) of the advertising regulations by not identifying the broker.



Barchetta - \$305,000 - MLS #12345

Beautifully landscaped with a recently updated kitchen with granite countertops, this charming home has 3 bedrooms including a modern master suite, 2 full baths, 2-car garage and deck overlooking a 1/2-acre fenced well manicured yard. The spacious family room features brick fireplace with granite mantel.

The Dagny Taggart Team: Experts in Sold!



Jonathon "Jon" Galt

of the **DAGNY TAGGART TEAM**
Licensed Real Estate Salesperson

518-555-2112 (o) 518-555-2121(c)

jgalt@spindriftherealty.com



SPINDRIFT REALTY

15 Main Street

Caravan, NY 12345

Compliant: This example of a print advertisement mentioning a team that complies with the regulations.



Barchetta - \$305,000 - MLS #12345

Beautifully landscaped with a recently updated kitchen with granite countertops, this charming home has 3 bedrooms including a modern master suite, 2 full baths, 2-car garage and deck overlooking a 1/2-acre fenced well manicured yard. The spacious family room features brick fireplace with granite mantel.

The Taggart Team: Experts in Sold!



Jonathon "Jon" Galt

of the TAGGART TEAM

Licensed Real Estate Salesperson

518-555-2112 (o) 518-555-2121(c)

jgalt@spindriftrealty.com



Barchetta Area - \$305,000 - MLS#12345

Beautifully landscaped with a recently updated kitchen with granite countertops, this charming home has 3 bedrooms including a modern master suite, 2 full baths, 2-car garage and deck overlooking a 1/2-acre fenced well manicured yard. The spacious family room features brick fireplace with granite mantel.

Non-compliant: This example of a team advertisement does not comply because it violates 19 NYCRR§175.25 c(1) by not identifying the broker and the "team name" provision of 19 NYCRR§175.25 e(1) by not including "at/of Spindrift Realty." This ad also violates 19 NYCRR§175.25 c(9) by not identifying the actual geographic area the property is located in.



SPINDRIFT REALTY

Jonathon "Jon" Galt

Licensed Real Estate Salesperson

jgalt@sptndrftrealty.com

SPINDRIFT REALTY

15 Main Street, Caravan, NY 12345

518-555-2112 (o) 518-555-2121 (c)

www.spindriftrealty.com



Compliant: The business card complies with d(2).



SPINDRIFT REALTY

Jon Galt

Real Estate Agent

jgalt@sptndriftrealty.com

SPINDRIFT REALTY

Caravan, NY 12345

www.sptndriftrealty.com



Non-Compliant: This example of a business card violates c(3) by using a nickname without the full name and c(4) for not listing the proper license type.



SPINDRIFT
REALTY

For Sale

Jonathon "Jon" Galt
www.spindriftrealty.com

518-555-2112

Compliant: This for sale sign meets the requirements of 19 NYCRR§175.25 d(5).



For Sale

Jonathon "Jon" Galt

www.spindriftrealty.com

518-555-2112

Non-compliant: This for sale violates 19 NYCRR§175.25 d(5) by not identifying the broker. Merely reciting the brokers URL does not meet the requirements of 19 NYCRR§175.25 c(1) unless the broker was named "www.spindrift-realty.com."



Legal Hotline

Monday – Friday

9:00am – 3:00pm

518-436-9727

518-43-NYSAR

NYSAR.com

- For answers to many legal questions, please visit the Legal section of NYSAR.com.
- Podcasts of NYSAR Radio available in media section
- Legal Lines archive in publications
- Webinar archive in media section
- Legal update from NYSAR Business Meetings in media section



New York State Association of REALTORS®, Inc.

Questions about health insurance or the Affordable Care Act?

NYSAR's insurance broker, USI Affinity, is here to guide all NYSAR members about the many options available to you.

Call 888.834.3713

Questions?

