

# ADVERTISING FOR REAL ESTATE LICENSEES

## INTRODUCTION TO ADVERTISING

Advertising is one of the most important tools licensees have at their disposal to serve their clients. To clarify questions regarding advertising and marketing practices and to protect consumers from misleading or inaccurate advertisements, the Department of State (the “Department”) and the New York State Real Estate Board have recently adopted new comprehensive advertising regulations amending N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25, which will go into effect on November 2, 2020. The new regulations can be viewed [here](#).

To help licensed real estate brokers and salespeople comply with these regulations, the Department has prepared this document. If you have questions regarding advertising that are not addressed in this document, please feel free to contact the Department. Before placing any advertisements, the Department recommends using our advertising [check list](#).

## WHAT IS COVERED UNDER THE REGULATIONS?

The advertising regulations cover all “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, and flyers.” N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(a)(1).

Even if an advertisement does not mention a specific property, but is intended to promote the licensee, then Section 175.25 applies. The Department’s regulation has specific provisions relating to:

- Broker Websites
- Email Advertisements
- Nicknames
- Social Media Websites
- Team Websites
- Team Names
- For Sale Signs
- Smartphone ‘Apps’
- Paid 3<sup>rd</sup> Party Websites
- Broker Titles
- Photographs
- Broker Fliers and Mailers

As a licensed broker or salesperson it is important to become familiar with these requirements as the Department will seek to impose sanctions, including, but not limited to license revocation or suspension, fines and restitution against any licensee found to have violated these regulations. It is also important to note, that these rules and the guidance provided apply equally to “residential brokers” and “commercial brokers”; commercial and residential brokers are treated no differently under the applicable laws and regulations.

The following examples are not exhaustive, and are meant to help illustrate when and how the advertising regulations apply:

## GENERAL EXAMPLES

### Example 1:

John Smith, a licensed real estate salesperson with a well-known reputation, has just switched brokerages and places several advertisements in local newspapers and rented space on a roadside billboard to promote the change. Even though Mr. Smith intends to use the advertisements as a means to solicit business as a licensee and does not refer to any specific property Section 175.25 still applies to this advertisement.

### Example 2:

Jane Smith, a licensed real estate broker, has obtained an exclusive listing of real property and places an advertisement on a third-party website. The advertisement is intended to procure a buyer for the property. Section 175.25 applies to advertisements on third-party websites.

## EMAILS AND WEBSITES

Section 175.25 has specific provisions relating to the use of emails and internet websites. It is important to remember that before placing any form of advertising, a licensee should confirm that the advertising complies with the Department's regulation, even if the advertisement is placed on a third-party website.

Licensees may not advertise property that is subject to the exclusive listing of another broker without first having received the authorization and consent of the broker who holds the exclusive listing to the property. If consent is given to advertise the listing, the advertisement placed by the advertising licensee must "clearly and conspicuously" list the name of the broker who holds the exclusive listing followed by words to identify this broker as the listing broker. For example, "Jane Smith, Listing Broker" would be acceptable. "Jane Smith, Participating Broker" would **not be acceptable**. The advertisement, if placed on a third-party platform (i.e., not a website maintained by the license holder) must also disclose that the advertisement is just that, an advertisement. **Wording such as "advertisement" or "paid advertisement" must be clearly and conspicuously present in the advertisement.**

The following examples are meant to illustrate when a violation of the advertising regulations occurs:

### Example 3:

John Doe uses a third-party paid website to advertise his services as a local broker. The website includes contact information for other brokers, in addition to Mr. Doe, that have paid to join the website. The website links potential clients (i.e., buyers or sellers) without clearly disclosing if Mr. Doe has a particular listing on the webpage. Because the website does not clearly and conspicuously disclose Mr. Doe's relationship to the property, either as the listing broker or as an advertiser of his services, Mr. Doe and the other brokers have violated N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(d)(6).

### Example 4:

Jane Smith uses the same website described in Example 3, and this time the page includes the required statement (i.e., "advertisement"). The revised website fails however to clearly indicate whether the statement "advertisement" refers to the Ms. Smith or one of the other salespeople that also advertise on the page. As the webpage does not clearly attribute the disclaimer to Ms.

Smith, she and the other salespeople have violated N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(d)(6).

**Example 5:**

Jane Doe is a licensed real estate salesperson in upstate New York. In an effort to solicit clients, Ms. Doe emails all the members of a private organization of which she is a member; the email does not contain information regarding her sponsoring broker. In this example, the email violates N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(d)(4), in part, because it was an initial email to potential clients and it did not contain information regarding the brokerage with whom Ms. Doe is affiliated.

**Example 6:**

John Smith, a licensed real estate salesperson, uses a mobile app to advertise an exclusive listing. The app limits how many characters may be sent in each advertisement, and Mr. Smith does not disclose for example his license type (i.e., “licensed real estate salesperson”). In this example, Mr. Smith violates N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(c)(4) because his title was not disclosed. Mr. Smith could have complied with the regulation by “threading” his advertisements and necessary disclosures to make clear that multiple successive messages that exceed the character limitations actually act as one advertisement. As an alternative, the Department would permit Mr. Smith to provide a clear, conspicuous and unambiguous link within the same advertisement to a separate page where all the required disclosures are made. For a link to be acceptable, it must clearly and conspicuously disclose the link’s purpose and cannot simply state “click here for more information”.

**LOGOS, NICKNAMES, TEAMS AND TITLES**

The use of certain logos, nicknames, team names and titles are permitted under the advertising regulations. The intent behind the Department’s advertising regulations is, in part, to promote transparency and clarity in real estate advertising. Accordingly, advertising which is unclear or has the effect of confusing the public is prohibited.

The following examples are meant to illustrate when the use of certain logos, nicknames, team names and titles are prohibited:

**Example 7:**

Jane Smith places an advertisement using “licensed sales agent” instead of her correct license type, which is “licensed associate real estate broker”; Ms. Smith’s advertisement violates N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(c)(4) because she used a misleading and incorrect title.

**Example 8:**

A licensed real estate salesperson wants to advertise using a nickname. In all of the salesperson’s advertisements, the salesperson’s real name was not disclosed and only a nickname was used. While nicknames are permitted, because the salesperson’s full licensed name was not also included, the salesperson violated N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(c)(3).

**Example 9:**

Jane Smith and John Doe are salespeople associated with “Department of State Realty Inc.” and decide to form a team. They call their team “The Smith and Doe Group”. In this example, the team name does not comply with N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(e) because the

word “team” was not in the name itself and team cannot have “group” in its name; additionally, when the licensees’ full names are not included, the team name must be followed by: “at/of [full name of the broker/brokerage].” An example of an appropriate name for this team could have been “The Smith & Doe Team at Department of State Realty Inc.”

**Example 10:**

The “Jane Smith and John Doe Team” place advertisements in a local newspaper with their own team logo. Their advertisements do not contain the logo or name of their sponsoring brokerage. While teams are allowed to use their own logos, because the sponsoring brokerage’s logo or name was not also included, the advertisement violates N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(c)(9).

**ADVERTISING CONTENT**

Advertising must be presented in an honest and accurate manner to avoid harm to the public; this includes using appropriate photography and providing fair descriptions of property being offered.

The following examples are meant to illustrate when certain content is unlawful:

**Example 11:**

John Smith, a licensed real estate salesperson, advertises an exclusive listing on his broker’s website. In an effort to get the most internet views, Mr. Smith uses professional photographs of the property taken by a prior broker; Mr. Smith does not have permission to use those photographs. Because Mr. Smith did not have permission to use those photographs, Mr. Smith violated N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(b)(2)(iii).

**Example 12:**

Jane Smith, a licensed associate broker, places an advertisement for a short-term, 2-family summer rental in an area which is known to require seasonal permits. Ms. Smith finds a renter for the property but never discloses that a seasonal permit is required, and makes no effort to determine if the property is legal and can be used for the purpose for which the client is seeking Ms. Smith’s advice and assistance. After the lease signing, it is determined that the property is neither a legal 2-family rental nor has the required permit. In this case, Ms. Smith violates, among other provisions, N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25(c)(9) because the advertisement did not contain an honest and accurate description of the property to be leased.

**Example 13:**

A website, which itself is a licensed real estate brokerage, allows other licensed brokers to advertise their listings. Even for listings which do not belong to website operator, N.Y. Comp. Codes R. & Regs. tit. 19, § 175.25 still applies to all advertisements on such website.

If you have questions regarding advertisements, please email them to the Department at: [licensing@dos.ny.gov](mailto:licensing@dos.ny.gov) or contact 518-474-4429. Call Center Representatives are available from 8:30am to 4:30pm Monday through Friday except on Legal Holidays.