

201 KAR 11:105. Advertising.

RELATES TO: KRS 324.117, 324.160(4)(d), (6)

STATUTORY AUTHORITY: KRS 324.117, 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) and KRS 324.282 require the Kentucky Real Estate Commission, with the approval of the executive director of the Kentucky Real Estate Authority, to promulgate administrative regulations to carry out and enforce the provisions of KRS Chapter 324. KRS 324.117(5) requires the commission to promulgate administrative regulations to define false, misleading, or deceptive advertising. KRS 324.117(6) requires the commission to promulgate administrative regulations to define the manner in which licensees may utilize any internet electronic communications for advertising or marketing. This administrative regulation establishes certain standards for real estate advertising practices, including internet advertising.

Section 1. Consent Required to Advertise a Specific Property. (1)(a) A licensee shall not:

1. Advertise real estate for sale or lease without the written consent of the owner;
2. Place signage or another advertisement on any private or listed property without the written consent of the owner; or
3. Promote or advertise a specific property listed by another principal broker unless the licensee has requested and obtained written consent from the listing principal broker.

(b) Nothing in paragraph (a)1. through 3. of this subsection shall prohibit a licensee from utilizing public information, including information regarding real estate closed by another licensee, to market his or her real estate brokerage services to consumers.

(2) A licensee who served as a buyer's agent may advertise his or her role in a sale after a closing has occurred if the advertisement clearly and visibly states that the licensee's participation was as the buyer's agent.

Section 2. Content Required. (1)(a) The principal broker, or his or her designee, shall establish written standards for review and approval of advertising activity of the real estate company and affiliated licensees to ensure compliance with KRS Chapter 324 and 201 KAR Chapter 11.

(b) Pursuant to KRS 324.160(6), a principal broker shall be held liable for acts by an affiliated licensee or licensees that the principal broker knew or should have known about that are in violation of either the principal broker's standards for review and approval, or KRS Chapter 324 and 201 KAR Chapter 11.

(2) All advertisements shall include:

- (a) The full name of the real estate brokerage company registered with the commission; or
- (b) The full name of the principal broker registered with the commission, with a clear designation of principal broker status.

(3)(a) An advertisement may include in written text an affiliated licensee's first and last name, or an alternate or assumed name as set forth in Section 4 of this administrative regulation, as registered with the commission, if the principal broker has informed the commission of the affiliated licensee's first and last name, or alternate or assumed name being used.

(b) Each affiliated licensee shall be limited to the use of one (1) nickname in place of, or along with, the licensee's first name, and it shall be the responsibility of each individual licensee to inform the commission of the nickname being used. A nickname shall not be used unless the nickname is reflected on the licensee's online services portal before use.

Section 3. Display of Content Required. (1) The content required by Section 2(2) of this administrative regulation shall be displayed in written text. The content shall:

- (a) Be clear and visible to a typical observer of the advertisement; and
- (b) Not be false, misleading, or deceptive.

(2)(a) The content permitted by Section 2(3) of this administrative regulation shall not appear larger than the content required by Section 2(2) of this administrative regulation.

(b) The requirements of paragraph (a) of this subsection shall not apply to the following promotional materials that advertise a licensee:

- 1. Hats;
- 2. Pens;
- 3. Notepads;
- 4. Apparel;
- 5. Name tags; and
- 6. The sponsorship of charitable and community events.

(c) The commission shall waive the requirements of paragraph (a) of this subsection for specific promotional materials not stated in paragraph (b) of this subsection upon finding the proposed promotional material would not constitute false, misleading, or deceptive advertising.

(3)(a)1. For purposes of real estate company or licensee advertisement via internet, social media, or other digital or online forms of advertisement, every individual viewable page or post shall constitute a separate advertisement; and

2. Each advertisement shall contain the content required by Section 2(2) of this administrative regulation in the page or post header, or visible on the page or post without the observer scrolling or otherwise navigating the page or post to view the content required; or

(b) If a page or post cannot reasonably comply with Section 2(2) of this administrative regulation, the advertisement shall include a clickable direct link, that is clear, visible, and identifiable as a link, to a page, post, or user account profile that contains the content required displayed in accordance with paragraph (a)2. of this subsection.

(4) Advertisements that include an audiovisual presentation shall include an audible announcement or written display of the content required by Section 2(2) of this administrative regulation at the beginning of the advertisement.

(5) Any internet, social media, and other digital or online form of advertising that was true and accurate at the time it was made shall not be in violation.

(6) A logo that does not contain written text of the content required by Section 2(2) of this administrative regulation shall not constitute a substitute for the content required.

(7) If the licensee's principal business location is outside Kentucky, the advertisement shall:

- (a) Indicate that the licensee holds a Kentucky license to broker real estate; and
- (b) Include the regulatory jurisdiction of the licensee's principal business location.

(8) The requirements established by this administrative regulation shall not apply to logos, brands, or directional and open house signs if the logo, brand, directional, and open house signs do not contain the name of a sales associate.

Section 4. Use of Alternate or Assumed Names. (1) More than one (1) licensee, whether a team, group, other business arrangement, or real estate brokerage company, may collectively use an alternate or assumed name for advertising with the written approval of the principal broker.

(2) Prior to allowing the use of an alternate or assumed name in advertising, a principal broker shall:

(a) Register, or ensure the registration of, the alternate or assumed name with the commission; and

(b) Ensure that the alternate or assumed name is populated in the principal broker's or affiliated licensee's online services portal.

(3) An alternate or assumed name shall not:

(a) Contain terms that may lead the public to believe the licensee or licensees approved to use the alternate or assumed name is offering real estate brokerage services independent of the principal broker, unless the alternate or assumed name is for the real estate brokerage company; or

(b) Be used by more than one (1) group of licensees within the principal broker's brokerage company, unless the alternate or assumed name is for the real estate brokerage company.

(4) An alternate or assumed name may include reference to a name or person, if the name or person has not lost the ability to engage in real estate brokerage through administrative discipline or by operation of law.

(5) If the alternate or assumed name applies to a team or group, the alternate or assumed name shall end with the word "team" or "group."

Section 5. False, Misleading, or Deceptive Advertising. (1) False, misleading, or deceptive advertising is prohibited pursuant to KRS 324.117(1).

(2) An advertisement is false, misleading, or deceptive, if the advertisement:

(a) Is known or reasonably should have been known to be false or contrary to fact at the time of placement of the advertisement;

(b) Misleads or misinforms the general public in any manner; or

(c) Would lead a reasonable observer to believe that real estate brokerage services were being offered by an affiliated licensee or licensees independent of their real estate brokerage company or principal broker.

Section 6. Guaranteed Sales Plans. (1) If a licensee advertises a guaranteed sales plan, the licensee shall disclose in writing whether:

(a) A fee is charged for participation;

(b) The real estate shall meet qualifications for participation;

(c) The purchase price under a guarantee of purchase of the owner's real estate shall be determined by the licensee or a third party;

(d) The owner of the real estate shall purchase other real estate listed for sale by the licensee or his or her designee; and

(e) An exclusive buyer agency agreement is required.

(2) The advertisement may be in print or electronic display, on radio, or on television and shall be clear and understandable.

(a) For print or electronic display advertising, the letters shall be at least twenty-five (25) percent the size of the largest letter in the advertisement;

(b) For television advertising, written communication shall appear on the screen:

1. At least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering; and

2. In letters that shall be at least eighteen (18) video scan lines in size for uppercase letters or at least twenty-four (24) video scan lines for uppercase capital letters if uppercase capitals and lowercase letters are used.

Section 7. Client Advertising. Consistent with KRS 324.117(4), a licensee shall advise his or her client of the advertising obligations contained in this administrative regulation.

Section 8. Effective Dates. The commission shall begin enforcement of Section 3 of this

administrative regulation six (6) months after the effective date of this administrative regulation. (KSREC-15 (Rules 10, 11); 1 Ky.R. 598; eff. 4-9-1975; 17 Ky.R. 2214; 2690; eff. 3-8-1991; 27 Ky.R. 1508; eff. 4-9-2001; 31 Ky.R. 1328;1646; eff. 4-22-2005; 32 Ky.R. 2311; 33 Ky.R. 719; eff. 10-6-2006; 40 Ky.R. 2811; 41 Ky.R. 741; eff. 10-31-2014; 46 Ky.R. 86; 1183; 1808; eff. 12-16-2019.)