

**PUBLIC PROTECTION CABINET
Kentucky Real Estate Authority
Kentucky Real Estate Commission
(Amendment)**

201 KAR 11:105. Advertising~~[listed property; advertising public information about specific property; under what conditions consent and authorization of owner or principal broker is required].~~

RELATES TO: KRS 324.117, 324.160(d),~~[(w)]~~ (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 regulations~~[KRS 324.282 requires the Kentucky Real Estate Commission 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~~[real estate].~~

Section 1. Consent Required to Advertise a Specific Property. (1) A licensee~~[real estate broker]~~ shall not:

(a) Advertise~~[offer]~~ real estate for sale or lease without the written consent of the owner;~~[-]~~

(b) Place signage or another advertisement on any private or listed property without the written consent of the owner; or

(c)1. 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.

2. Nothing in subsection (c)1. of this Section shall prohibit a licensee from utilizing public information, including information regarding real estate sold 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~~[(1) If promoting or advertising the real estate to the general public, the broker shall have a written listing agreement signed by the owner.~~

~~(2)(a) After a closing has occurred, a buyer's agent may advertise his or her role in the sale.~~

~~(b) The advertisement shall conspicuously state that his or her 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 held liable for repeated violations by affiliated licensee(s) 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 design-

nation 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, so long as 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) shall be displayed in written text. The content must:

(a) Be clear and visible to a typical observer of the advertisement; and

(b) Not be false, misleading, or deceptive.

(2) 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.

(3)(a) 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

(b) Each advertisement shall contain the content required by Section 2(2) 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

(c) If a page or post cannot reasonably comply with subsection (2)(b) of this Section, 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 subsection (2)(b) of this Section.

(4) Advertisements that include an audiovisual presentation shall include an audible announcement 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) 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.

Section 4. Use of Alternate or Assumed Names. (1) More than one 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 could lead the public to believe the licensee(s) 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;

(b) Be used more than once by licensees within the principal broker's brokerage company;
or

(c) Contain the word "company", "firm", or "realty" unless the alternate or assumed name is being used by a real estate brokerage company.

(4) An alternate or assumed name may include reference to a name or person, so long as 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 include 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 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(s) 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; and

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

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

(a) For print advertising, the letters that 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 at least three (3) seconds for the first line of lettering and at least one (1) second for each additional line of lettering and 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 sixty (60) days after the effective date of this administrative regulation. ~~[A sign shall not be placed on any property by a real estate licensee without the written consent of the owner.~~

~~Section 3. (1) In accordance with KRS 324.117(4), a real estate property print advertisement~~

~~of a licensee, or an offer or solicitation to provide brokerage services by a licensee, related to marketing or identifying real property for sale or lease, shall include the name of the real estate company where the licensee's license is held or the name of the real estate company's principal broker with whom the licensee is affiliated.~~

~~(2) If the advertisement includes the name of the real estate company's principal broker, the principal broker's name shall include his or her title as principal broker or be followed by any other clear designation of his or her status as a broker.~~

~~(3) The requirements in this section shall apply to advertisements for listed property only.~~

~~Section 4. (1) An advertisement by a licensee shall be approved by:~~

~~(a) The principal broker with whom the licensee is affiliated; or~~

~~(b) An individual designated by the principal broker to approve the advertisement.~~

~~(2) A principal broker shall require his or her licensee to:~~

~~(a) Discuss with the property owner-client the advertising requirements of KRS 324.117;~~

~~(b) Provide the owner-client with written notice of these advertising requirements; and~~

~~(c) Obtain the owner-client's written agreement to comply with the advertising requirements.~~

~~Section 5. A licensee may advertise public information, such as sales price, of properties that have sold and closed, even if the licensee did not have a written listing agreement on the property.~~

~~Section 6. A licensee may advertise the listings of another real estate brokerage company if:~~

~~(1) The licensee has requested and obtained the listing broker's consent to advertise the other company's listing or listings; and~~

~~(2) The licensee's advertisement of the other company's listings includes the complete name of the other real estate brokerage company.]~~

LOIS ANN DISPONETT DATE, Chair

H.E. CORDER II, Executive Director

K. GAIL RUSSELL, Secretary

APPROVED BY AGENCY: June 12, 2019

FILED WITH LRC: June 13, 2019 at 9 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 23, 2019 at 10:00 a.m. Eastern Time at the Kentucky Real Estate Commission, 656 Chamberlain Ave., Suite B, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this Department in writing by five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on July 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Heather L. Becker, General Counsel, Kentucky Real Estate Authority, 656 Chamberlin Ave., Suite B, Frankfort, Kentucky 40601, phone (502) 564-7760, fax (502) 564-1538 email: Heather.Becker@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Heather L. Becker

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation modernizes advertising standards for licensees of the Kentucky Real Estate Commission.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to clarify the regulatory regime governing advertising by licensees of the Kentucky Real Estate Commission.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 324.281 requires the commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions assigned to the commission by 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.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The Real Estate Commission is charged with licensing and regulating real estate brokers and sales associates in Kentucky. This administrative regulation consolidates and clarifies the rules that will govern advertising for all licensees in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This administrative regulation consolidates and clarifies the rules that will govern advertising for Real Estate Commission licensees in Kentucky. This proposed administrative regulation amendment includes new provisions relating to advertising by teams and advertising on the internet, including social media.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to establish certain standards for real estate advertising practices, including internet advertising.

(c) How the amendment conforms to the content of the authorizing statutes: 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.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation consolidates and clarifies the rules that will govern advertising for Real Estate Commission licensees in Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect all of the Real Estate Commission's current licensees, as well as prospective license applicants. The Commission currently licenses approximately 23,000 licensees. Additionally, this administrative regulation will affect all of the Real Estate Commission's current prelicensing, post licensing, and continuing education providers. Lastly, this administrative regulation will affect the general public to the extent they interact with licensed real estate professionals.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by ei-

ther the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Prospective licensees and members of the general public are not required to take any action to be in compliance with this administrative regulation. Current licensees will likely be required to reprint all advertising and redevelop websites and social media accounts to comply with the Sections 2 and 3 of this administrative regulation. Additionally, active real estate brokerage companies will have to augment their business models to comply with new licensing terminology. Education providers will be required to amend their instruction materials to comply with the new advertising rules contained in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no compliance costs for prospective licensees and members of the general public. Current licensees and active real estate brokerage companies will likely incur significant expense reprinting and redeveloping all facets of their business advertisement. Costs will vary for each licensee and real estate brokerage company. Education providers may incur incidental expenses in amending their instruction materials to comply with the new advertising rules contained in this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, licensees will adequately apprise the public of all information required in a print or social media advertisement.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no initial cost to implement this administrative regulation.

(b) On a continuing basis: There is no cost to implement this administrative regulation on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no funding necessary to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change, if it is an amendment: The implementation of this administrative regulation requires no increase in fees or funding.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees. This administrative regulation neither directly nor indirectly increases any fees.

(9) TIERING: Is tiering applied? No. Tiering is not applied because this administrative regulation applies equally to all regulated entities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Kentucky Real Estate Commission will be impacted.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 324.281(5), KRS 324.282, and KRS 324.117 require the Real Estate Commission to promulgate administrative regulations with the approval of the executive director of the Kentucky Real Estate Authority to fulfill the duties and functions outlined in KRS Chapter 324. KRS 324.117 requires the commission to promulgate administrative regulations to define advertising practices, including internet electronic commu-

nications for advertising or marketing.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation will not generate any revenue for the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation will not generate any revenue for subsequent years.

(c) How much will it cost to administer this program for the first year? There is no cost to administer this administrative regulation for the first year.

(d) How much will it cost to administer this program for subsequent years? There is no cost to administer this administrative regulation for subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Neutral

Expenditures (+/-): Neutral

Other Explanation: This administrative regulation is not expected to have a fiscal impact.