



ADVERTISING GUIDELINES

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This **Advertising Guidelines** is a comprehensive collection of Frequently Asked Questions (FAQs) based on information gathered from the National Association of REALTORS® (NAR), the California Association of REALTORS® (C.A.R.), the California Department of Real Estate (DRE), the California Regional Multiple Listing Service (CRMLS) and the opinion and research of Tyler & Bursch, LLP. This information is subject to periodic change. The **Advertising Guidelines** should address many of your questions related to advertising and marketing in the real estate industry. The rules discussed should be read individually to determine actual applicability for the specific circumstance. The **Advertising Guidelines** is a living document and subject to change. These guidelines are up to date as of July 1, 2020.

Failure to comply with the rules referenced in these **Advertising Guidelines** can result in the offending REALTOR® receiving a Multiple Listing Service (MLS) violation, an Ethics violation, and a fine of up to \$15,000. A real estate agent may be subject to additional civil penalties and fines. There may be additional issues and other advertising rules not included in the FAQs. Any further questions regarding alleged offending advertisements should be addressed to the Professional Standards Department at your Association.

Tyler & Bursch, LLP reserves any and all intellectual property rights in this **Advertising Guidelines**. The **Advertising Guidelines** do not necessarily reflect the point of view of Tyler & Bursch, LLP or other person or entity who publishes it. These guidelines reflect the general laws and guidance relating to advertising, but agents may be subject to different requirements as may be implemented during state emergencies similar to COVID-19. This **Advertising Guidelines** contain legal information and opinions of the writers. Legal information is not the same as legal advice, which is the application of law to an individual's specific circumstance. Although every effort is made to ensure the information is accurate and useful, it is recommended that you consult with a lawyer to obtain professional assurance that the information provided and your interpretation of it is appropriate for a particular situation. To request further information or to comment on the **Advertising Guidelines**, contact us at (951) 600-2733.

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Section I

Section 1. Uniform Standards of Advertising

1. What is considered “advertising”?

- Print materials
- Electronic (internet)
- Social media
- Zillow
- Realtor.com
- Signage on the property
- Multi-brokerage networks
- Brokerage websites
- Open house signs
- First point of contact solicitation materials (See Question 4)

2. What are the 2018 Uniform Standards in Advertising?

- Basic Rule – All first point of contact solicitation materials must include:
 - The name and license number of the sales agent or broker-associate; and
 - The responsible broker’s identity
 - The responsible broker identity means the name under which the broker is licensed by the DRE and conducts business in general, or a substantial division of the real estate firm
 - The responsible broker is the person or entity with whom the agent is licensed
 - The broker’s license number is optional when the name and license number of an agent or broker associate is included
 - It is good business practice to include the broker’s license number if the corporation is operating under or associated with a Fictitious Business Name (DBA or FBN)
 - For example, a “Betty Sue” brokerage that is operating under “SEC Corporation” as the responsible broker listed with the DRE should include the broker’s license number to avoid any confusion.

3. Examples of print advertising include but are not limited to:

- Mailings to residents in a certain geographical area
- Hand delivered flyers
- Flyers posted on or about the brokerage office
- Other print advertisements sent to non-clients

4. Examples of “solicitation materials intended to be first point of contact” are, but not limited, to:

- Business cards

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- Websites owned, controlled, and/or maintained by the licensee, including social media
- Promotional and advertising flyers, brochures, e-mails, and leaflets
- Advertisements in electronic media (i.e. radio, cinema and television ads, and the opening section of streaming video and audio)
- Print advertisement in any newspaper or periodical
- “For Sale” signs placed on or around a property intended to alert the public that the property is available for lease, purchase, or trade
- “[A]ny marketing or promotional materials designed to solicit the creation of a professional relationship between the licensee and consumer or is intended to induce or entice a consumer to contact the licensee about any service for which a license is required”¹

5. Are there any exceptions to the Uniform Standards of Advertising?

- An exception may apply to “for sale,” “open house,” lease, rent or directional signs when no sales agent or broker-associates is referenced
- These signs do not need the agent’s name or license number if:
 - a) The responsible broker’s identity appears, and there is no reference to an associate broker or sales agent; or
 - b) There is no licensee identification at all (i.e. just a generic “open house” and “directional” signs). Under this exception, there cannot be any reference on the sign to a broker or sales agent. A “reference” to an agent would be anything that names an agent in any way
- The second exception is not recommended, as such a sign would likely be a NAR Code of Ethics violation of Article 12, Standards of Practice 12-5
- The second exception is not permitted for “For Sale” signs.
- Exceptions from the Uniform Standards of Advertising are not exceptions from Clear Cooperation
- Agents should be aware of additional restrictions which may be implemented during national or state emergencies, such as COVID, as states may implement restrictions on advertising or distribution of advertising materials to minimize the spread of a pandemic.

6. Do I need to put my California Department of Real Estate (DRE) license number on print or first point of contact materials?

- Yes
- All print and first point of contact materials must contain the DRE license number, as well as a unique identifier for mortgage loan originators from the Nationwide Mortgage Licensing System and Registry (NMLS)
- The salesperson’s name, 8-digit DRE license number and associate broker’s name need to appear in readable font no smaller than the smallest size type used in the solicitation materials

¹ 10 Cal. Code Regs. § 2773(a)

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- 7. If an advertisement contains more than one licensee, must the DRE number of each licensee be included?**
- Yes, the number of each licensee must be included
 - Team advertisements require the DRE number of only one team member licensee (See Section 2 on Teams)
- 8. How should I label my license number?**
- Effective July 1, 2018, the BRE is returning to its standing as the Department of Real Estate (DRE)
 - The unofficial policy is that DRE, BRE or CalBRE are all acceptable ways to reference the license number
 - There must be a designation in front of the number indicating that it is a license number
 - Agents can use up existing stock of advertising materials before changing their advertisements to “DRE”
- 9. Must every real estate licensee include his or her DRE license number on all advertisements?**
- Yes
 - Every licensed real estate broker and salesperson must display his or her name, eight-digit DRE license number and broker’s name on:
 - All solicitation materials intended to be the first point of contact with a consumer
 - All real property purchase agreements if acting as the agent for the consumer
 - Any online advertisements, including social media
 - All active Facebook posts soliciting prospective clients require the licensee’s DRE number, name, and the broker identification
 - If there are more than one licensee shown in the solicitation material, then the license identification number of each licensee must be included in the advertisement
 - The use of the term REALTOR® also places a consumer on notice that the advertisement is being done by a licensee, but may only be used by those who are actually a REALTOR®
- 10. Must a real estate licensee include the name of his or her responsible real estate broker on all advertisement of real estate services?**
- Yes, the name of the responsible broker’s identity must also be included on all first point of contact solicitation material (see 2018 Uniform Standards of Advertising)
 - The responsible broker identity means the name under which the broker is licensed by the DRE and conducts business in general, or a substantial division of the real estate firm
 - The responsible broker is the person or entity with whom the agent is licensed
 - For REALTORS®, the NAR Code of Ethics Article 12, Standard of Practice 12-5:
 - The name of the firm must be present in any advertising of real estate services or of property listed with the firm

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- All REALTORS®' advertisements of real estate services or property listed by the office must contain the office name
- The brokerage name must be included when advertisements consist of a Team Name

11. Must a salesperson also use the broker's name in an advertisement when using the salesperson's name and/or telephone number?

- Yes, the name of the responsible broker's identity must also be included in an advertisement when using the salesperson's name and/or telephone number (see 2018 Uniform Standards of Advertising)
- REALTORS® must utilize the name of the brokerage in advertising under NAR Code of Ethics Article 12, Standard of Practice 12-5

12. Is a real estate licensee, broker, or office required to disclose licensed status in all advertising?

- Yes, for all DRE licensees
- Any time a real estate licensee's services are required, the real estate salesperson (including brokers) must indicate, by use of terms such as broker, agent, real estate licensee, or REALTOR® (if applicable), or abbreviations such as bro. or agt., that the advertising is being done by a real estate licensee

13. Is a licensee's DRE number required on advertisements if that licensee is a mortgage loan broker?

- Yes, any real estate licensee who advertises loans must disclose within the printed text of that advertisement:
 - The DRE license number
 - The unique identifier assigned to that licensee by NMLS
- When soliciting borrowers, a licensed mortgage broker must disclose within the printed text of that advertisement:
 - Licensed status and the state regulatory entity under which that loan transaction will be made or arranged
- If advertising for investors or lenders, the advertisement must disclose within the printed text of that advertisement:
 - The licensee's licensed status
 - The license number of all licensees on the advertisement
 - The responsible broker's license number
- The NMLS unique identifier is not required

14. What are some examples of common advertising violations by mortgage brokers?

- Using comparative or superlative terms without including additional information to make the term used unambiguous
- Advertising an interest rate without disclosing whether the rate is for a first mortgage or junior loans or both

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- Advertising an interest rate without disclosing the Annual Percentage Rate (APR)
 - Stating “APR Not Calculated” is not sufficient
- Advertising loans as “No Cost” loans or “No Fee” loans are by themselves misleading

15. Can I advertise (“sold”) listings in print advertising and “first point of contact materials”?

- Yes, under these conditions:
 - It is your own listing – cannot claim that you “sold” or participated in selling the property unless you sold the property
 - You have **written permission from the listing agent and/or broker** to advertise his/her listings in active, back-up, pending, withdrawn, or hold statuses
 - If you are a cooperating broker, you will need the consent of the listing broker to post a “sold” sign on the property
 - You must not make any misrepresentations regarding the listings or mislead the public into thinking you sold the property
 - If you did not sell the property, use a disclaimer like: “Permission to use of the above-referenced properties in advertisement material has been provided by the separate and independent brokers who have since sold the properties. Neither I, my Team, nor my Brokerage represent through the use of this advertisement to have listed or sold the above-referenced properties. The use of these properties in any solicitation material is meant for advertising purposes only.”
 - This will help indicate that the properties listed in the print advertising were based on geography and are not your individual listings
 - Present a true picture (See CRMLS Rule 12.10 and Article 12 of the REALTOR® Code of Ethics)
 - Be cautious, as the use of identifying marks, such as the incorrect use of geographical landmarks, may violate the MLS Rules and Code of Ethics
- CRMLS Rule 12.7 also pertains to the use of the term “sold”

16. What if I did not receive consent from the listing agent of a property prior to placing it in my advertisement?

- A REALTOR® may not advertise a property that he/she has not listed unless written permission is given. Once marketed to the public, the REALTOR® has one (1) business day.

17. Can I advertise another agent’s listing on my website?

- Yes, if:
 - The information is from IDX, the MLS data can be used provided you comply with CRMLS Rule 12.16 and its subsections
 - The listing broker has the seller’s written permission
 - Broker consent is given, if the MLS data is from another broker’s listing

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18. In advertising square footage, may I rely on my own representation for determining the size?

- No, do not rely on your own representation or that of the property owners
 - Hire an appraiser to verify square footage
 - Do not affirmatively state in the advertisement what the square footage is, but instead provide it as an estimate
 - Recommend that the seller also hire an appraiser to confirm square footage amount
 - Use C.A.R.'s Square Footage and Lot Size Advisory form.
- Incorrect square footage amount could result in a claim for misrepresentation, deception, and/or possible fraud

19. Do I have to include a photograph for a property I upload into the CRMLS platform?

- Yes
- At least one photograph or rendering accurately depicting a substantial portion of the exterior of the subject property must be submitted to the MLS within two days of entry of the listing (CRMLS Rule 11.5.1(a))
 - Business Opportunity listings are exempted from this requirement

20. May I include my headshot or other forms of branding into the MLS listing photographs?

- No, branding is not allowed to appear in MLS listing photographs
- Branding includes, but is not limited to:
 - Headshots
 - Phone numbers
 - Email addresses
 - For Sale signs
 - Watermarks
 - Text or other marks on media
 - Any other reference to the listing agent or brokerage

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Section 2

Section 2. Teams, Nicknames and Fictitious Business Names

1. What is a “Team Name”?

- A Team Name is a “professional identity” or “brand name” used by a salesperson and at least one or more other licensees that meets the following requirements:
 - a. The name is used by two or more licensees who work together to provide services requiring a real estate license
 - b. The name includes the surname of at least one of the licensee members of the team
 - c. The name is used together with any of the following terms: “associates,” “group” or “team”
- The name does not include any term or terms, such as “real estate broker,” “real estate brokerage,” “broker,” or “brokerage” that would lead a member of the public to believe that the team is offering real estate brokerage services or that implies the team is operating independent of the real estate brokerage of which it is a part.
- A team name does not use the word “REALTOR®”.

2. Can a “Team Name” be used in my advertisements?

- Yes, but the following rules apply:
 - All print or electronic media and “for sale” signs must include each team licensee’s name displayed in a conspicuous manner, and must also include the license number of at least one of the licensed members of the team
 - The name of the brokerage under which the members of the team are a part must be displayed as prominently and conspicuously as the team name in all advertising
 - The broker’s license number is no longer required to be displayed
 - The advertising material must not contain any terms that imply the team is a real estate entity independent of the responsible broker
 - The name of the responsible broker must be the name that the broker uses to conduct business in general or a substantial division of the firm
 - It cannot be another team name or an agent owned Fictitious Business Name (FBN or DBA)
- These rules apply to first point of contact materials as well

3. Can a broker prohibit a salesperson from using a Team Name?

- Yes, per the DRE.

4. Are Team Names limited to the name of one team member?

- No, a Team Name can use the name of more than one team member

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5. **Can licensed real estate brokers, who do not operate as broker associates, use a Team Name?**
 - No, brokers who operate solely as brokers **cannot** use a Team Name
 - Instead, brokers are required to file a FBN in order to register as a DBA

6. **Can an individual salesperson market themselves as a Team?**
 - No
 - A Team Name can only be used by two or more licensees who work together to provide services that require a real estate license or who hold themselves out to the public as a team, group or association

7. **Do Team Names need to be approved by the DRE or registered as a DBA?**
 - No, the DRE does not need to approve Team Names so long as all requirements have been met.
 - Team Names do not need to be registered as a DBA with the county

8. **What is a DBA?**
 - A DBA is the name a person or entity uses to conduct business if that person or entity is not using his or her own legal name
 - A FBN must be filed with the county and approved by the DRE (See Question 7)

9. **Can a licensed real estate broker operate under a DBA?**
 - Yes, a real estate broker may do business under a DBA
 - He/she/it must add the DBA to the person's or entity's license prior to it being used in real estate transactions that require a license
 - A real estate broker must file a FBN statement with the local county clerk and publish the statement in a public newspaper in the same county or counties in which they do business
 - An appropriate license application and fee must be sent to the DRE, along with a certified copy of the broker's filed and published FBN
 - A salesperson may use a broker's DBA if he/she receives written permission from the broker
 - The salesperson DBA is subject to the broker's control
 - The salesperson must include the responsible broker's identity in a manner equally as prominent as the DBA, along with his/her name and license number in all advertisement and solicitation materials

10. **What are disclosures are required for a DBA in advertising?**
 - The name of the DBA, the salesperson's name, the salesperson's 8-digit license number, and the broker's name
 - The 8-digit license number of the broker is optional
 - The broker's name (and license number if included) must be equally as prominent as the DBA

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- The salesperson's name and license number must be conspicuous

11. May a real estate licensee use a nickname in advertisement?

- A licensee can use a nickname in place of his/her legal name as long as the licensee uses his/her legal last name and uses his/her DRE license number in the advertising

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Section 3

Section 3. Neighborhood Market Reports: On Market

1. What is a “Neighborhood Market Report”?

- The “Neighborhood Market Report” (“NMR”) is defined as an advertising and/or information sheet (typically appearing in the form of a postcard, flyer, or newsletter) compiled by and/or for use by a licensee which sets forth a list of home activity in a particular neighborhood area
- Could be a violation of a REALTOR® member’s obligations under Article 12.

2. Are advertisements in newspapers, magazines, or other classified forms considered a NMR?

- Advertising appearing in newspapers, magazines, or other classified forms is not included in the definition of “Neighborhood Market Report” and is not authorized by CRMLS Rule 12.8.1

3. What should a NMR include?

- Your name
- Your 8-digit DRE License Number
- Your brokerage
- Your status such as REALTOR®, if applicable
- Your broker’s name
 - The broker’s eight-digit DRE license number is optional
 - The broker’s name needs to appear in readable font no smaller than the smallest size type used in solicitation material

4. Can I advertise my own listings in a NMR?

- Yes, you may advertise your own listings

5. Can I advertise another broker’s listing’s in my NMR?

- Yes, so long as you obtain **written permission from the listing agent and/or broker**
- You must first confirm with the CRMLS that the listing agent has not withheld their permission for you to use the on-market listings pursuant to CRMLS Rule 12.8.1
 - The listing broker’s consent for such advertising is presumed, in satisfaction of Rule 12.8, unless a listing broker affirmatively notifies CRMLS that the listing broker refuses to permit others to advertise his/her listing in the NMR (i.e. “opts-out”) either on a blanket or listing by listing basis
- To learn more about NMR feature within the CRMLS platform, please visit the following link:
<http://kb.crmls.org/knowledgebase/matrix-neighborhood-market-report-seller-participant-opt-in-field/>

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6. **As the listing broker of a property, can I refuse to permit other agents from advertising my listings?**
 - Yes. Standard of Practice 12-4 prohibits REALTORS® from offering, selling, leasing, or advertising an property without authority.

7. **Can I use another Broker Participant or Subscriber's listing information on my advertisements if I refused to allow others to use my information on a blanket basis?**
 - Listing brokers that refuse to permit other Broker Participants or Subscribers to advertise their listings on a blanket basis may not display the listings of the other brokers' listings in their own NMR (CRMLS Rule 12.8.1)

8. **If I previously gave consent as a listing broker to allow another agent or broker to advertise my listing in his or her NMR, may I withdraw that consent?**
 - Even where listing brokers have given blanket authority for other Broker Participants and Subscribers to advertise their listings in the NMR, such consent may be withdrawn on a listing-by-listing basis where the seller has prohibited it (CRMLS Rule 12.8.1)
 - It is recommended that the seller's prohibition be in writing
 - Participants and Subscribers are not permitted to include listings in their NMR from which listing broker has opted out and will be responsible for verifying that they have permission to advertise all listings contained in their Neighborhood Market Reports

9. **Can I use a photograph or property description taken from the CRMLS platform for my NMR or other forms of advertising?**
 - You cannot use a photograph or property description taken from the MLS unless that photograph or property description is from your own listing or you have gained written permission from the listing broker (or the owner of the image and property description) to use that photograph or property description in your advertising
 - It would be necessary to include a disclaimer as required by CRMLS Rule 12.9

10. **What is considered allowable listing content?**
 - Allowable Listing Content
 - Property address (and whether attached or detached)
 - Status
 - Price
 - Number of bedrooms
 - Number of bathrooms
 - Number of garages (and whether attached or detached)
 - Square footage
 - Lot size
 - Pool
 - Year built
 - Tract or development name
 - State if there is a pool

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- Display of other fields, as well as confidential information is prohibited
- 11. Do I need to identify the name of the listing agent on my NMR if that report contains another agent's on-market listings?**
- You are required to identify:
 - a. The name of the listing firm(s)
 - b. The name of the listing agent(s)
 - Both must be in a manner designed to easily identify such listing firm(s) or agent(s)
 - Such identification shall be in a reasonably prominent location and in a readily visible color and typeface not smaller than the median used in the display of listing data
- 12. Are these advertising rules relating to NMR or other similar forms of advertisements mandatory?**
- Yes, all real estate agents and REALTORS® must comply with certain advertising rules when it comes to referencing listings that belong to another agent, such as in a NMR type of advertising
 - For example, an agent cannot reference or show another broker's listing in the NMR without that other broker's prior permission, unless the referenced property is a closed sale
 - Even when referencing only closed sales, certain disclaimers and disclosures are required unless all closed sales belonged to the agent
- 13. Do I need to put a disclaimer on my NMR?**
- Yes, a disclaimer is stating that you do not own, or are responsible for, the material you are using
 - If you are providing any data from another broker or from the MLS on listings that you do not own, the following disclaimer must be readily visible to consumers but not less than seven point font:

CRMLS RULE 12.9:

“Based on information from California Regional Multiple Listing Service, Inc. as of (date the AOR/MLS data was obtained) and /or other sources. All data, including all measurements and calculation of area, is obtained from various sources and has not been, and will not be, verified by broker or MLS. All information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.”

- This disclaimer should be on any print or non-print forms of advertising
- The disclaimer should also include:
 - The date the data was obtained
 - The source of the information
 - The date of the listing or sold property
 - That the data has not been independently reviewed

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- You must also put a date range on the print advertising to show the time period related to the listings and statuses shown

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Section 4

Section 4. Neighborhood Market Reports: Off Market – Sold

1. What is a “Neighborhood Market Report” (“NMR”)?

- The NMR is defined as an advertising and/or information sheet (typically appearing in the form of a postcard, flyer, or newsletter) compiled by and/or for use by a licensee which sets forth a list of home activity in a particular neighborhood area

2. Are advertisements in newspapers, magazines, or other classified forms considered a NMR?

- Advertising appearing in newspapers, magazines or other classified forms is not included in the definition of NMR and is not authorized by CRMLS Rule 12.8.1

3. What should a NMR include?

- Your name
- Your eight-digit DRE License Number
- Your brokerage
- Your status such as REALTOR®
- Your broker’s name
 - The broker’s eight-digit DRE License Number is optional
 - The broker’s name needs to appear in readable font no smaller than the smallest size type used in solicitation material

4. Can I advertise my own listings in a NMR?

- Yes, you may advertise your own listings

5. Can I advertise another broker’s “sold” listings in my NMR?

- Yes, so long as you obtain **written permission from the listing agent and/or broker**
 - You must also include a disclosure

6. Do I need to put a disclaimer on my NMR?

- Yes, a disclaimer stating that you do not own, or are responsible for, the material you are using
- If you are providing any data from another broker or from the MLS on listings that you do not own, the following disclaimer must be readily visible to consumers but not less than seven point font:

CRMLS RULE 12.9:

“Based on information from California Regional Multiple Listing Service, Inc. as of (date the AOR/MLS data was obtained) and /or other sources. All data, including all measurements and calculation of area, is obtained from various sources and has not been, and will not be, verified by broker or MLS. All

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information should be independently reviewed and verified for accuracy. Properties may or may not be listed by the office/agent presenting the information.”

- This disclaimer should be on any print or non-print forms of advertising
- The disclaimer should also include:
 - The date the data was obtained
 - The source of the information
 - The date of the listing or sold property
 - That the data has not been independently reviewed
- You must also put a date range on the print advertising to show the time period related to the listings and statuses shown

7. Do I need to put a disclaimer on solicitation material such as a NMR?

- Yes, solicitation material require a disclaimer
 - Targeted solicitation to a person exclusively listed with another REALTOR® can be a violation of Article 16 of the Code of Ethics regardless of whether a disclaimer is included
- In order for the material to be considered “non-solicitation material”, the advertising campaign must have been directed in an indiscriminate manner to all property owners in a given geographical area

8. Can I use a photograph taken from the CRMLS for my NMR or other forms of advertising?

- You cannot use a photograph or property description taken from the CRMLS unless that photograph or property description is from your own listing or you have gained permission from the listing broker to use that photograph or property description in your advertising
 - It would be necessary to include a disclaimer as required by CRMLS Rule 12.9

9. Are these advertising rules relating to NMR or other similar forms of advertisements mandatory?

- Yes, all real estate agents and REALTORS® must comply with certain advertising rules when it comes to referencing listings that belong to another agent, such as in a NMR type of advertising
- For example, an agent cannot reference or show another broker’s listing in the NMR without that other broker’s prior written permission, unless the referenced property is a closed sale
 - Even when referencing only closed sales, certain disclaimers and disclosures are required unless all closed sales belonged to the agent

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Section 5

Section 5. “Coming Soon” Signage

1. What is “Coming Soon”?

- A “Coming Soon” status may be used by a Listing Broker and refers to a property that is not available for showings or tours, whether conducted by the Listing broker or otherwise until the property is placed into an Active or Active Under Contract status. Notwithstanding the the prohibition on showings, virtual showings are permitted. The Broker must obtain a seller signed instruction to submit the listing as “Coming Soon.”
- Nothing prevents prospective buyers from submitting offers on properties listed as “Coming Soon.”
- **Are “Coming Soon” signs a legitimate form of advertisement?**
- “Coming Soon” can be a legitimate advertising technique, allowing the owners more time to complete repairs, pack, or otherwise prepare the property for showing or sale
- A legitimate Coming Soon listing must be unavailable for showing
- Marketing or advertisement which is consistent with CRMLS Rule 7.9 must include language indicating that the property is “Coming Soon” and should include the date that the property will become “Active.” Properties listed under a “Coming Soon” status automatically convert to an “Active” status after twenty one (21) days. The twenty one (21) day period cannot be extended.

3. Are “Coming Soon” signs illegal?

- Possibly, failing to act in the client’s best interest and failing to disclose the pros and cons of a limited marketing plan, such as “coming soon” advertising and showing restrictions, can violate state real estate license laws and regulations
- Beware of dual agency risks and concerns

4. Do “Coming Soon” signs violate NAR’s Code of Ethics or CRMLS’s Rules and Regulations?

- Possibly
- Failing to act in the client’s best interest and failing to disclose the pros and cons of a limited marketing plan, such as “Coming Soon” advertising, can violate CRMLS policies and the REALTOR® Code of Ethics. Sellers should be completely aware of the Broker’s obligations and restriction pursuant to NAR’s Clear Cooperation rules.
 - REALTORS® must remember to promote and protect the interest of the clients; present a true picture in their advertising, marketing, and other representations; and make property available to other brokers for showing to prospective purchasers when it is in the best interest of the sellers (See Code of Ethics Articles 1 and 12). But, showings cannot occur when listed as “Coming Soon.”
- Prior to advertising a listed property as “coming soon,” brokers should check their local MLS rules to ensure compliance

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- CRMLS requires submission of the listing into the MLS within one (1) business day of marketing the property. Under Matrix/Flex, the listing must be submitted within 2 business days from the effective date of the listing agreement and should be submitted as either “Active” or “Coming Soon.” Under Paragon, Brokers must submit the listing within forty eight (48) hours of the effective date of the listing agreement and must be entered as active or submit an exclusion.
- For more information and a helpful video, visit <https://go.crmls.org/crmls-exclude-listing/>.

5. What are some best practices for legitimate Coming Soon listings?

- Advertise only for properties under a signed listing agreement
- Comply with all state licensing laws and regulations
- Have a compelling reason that this tactic is in the best interest of the client
- Have the client’s informed consent in a thoroughly documented written agreement
- Discuss Clear Cooperation with the seller and advise them of the prohibition on showings under the “Coming Soon” status
- Comply with CRMLS Rules 7.8 and 7.9

6. Do “Coming Soon” signs affect Days On Market calculation for the CRMLS?

- No. “Days On Market” begins as of the “Active” date.

7. Can I use the SELM Form to exclude a listing from the MLS?

- No. The Seller’s Instruction to Exclude Listing From the MLS (SELM) cannot be used to keep properties off of the MLS. CRMLS has a “Registered” status which will be deployed in late 2020 which permits the Broker;/Agent to submit the Property into the MLS to comply with NAR’s Clear Cooperation policy. Only the listing agent, listing broker, listing broker’s office manager, and MLS staff can see listings in “Registered” status.
- The SELM should be obtained by the listing broker/agent which desires to place the listing into a “Registered” status but will not need to be submitted to CRMLS once the “Registered” status becomes available. It should be obtained as CRMLS may request the exclusion form pertaining to the listing under CRMLS Rule 8.2.

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Section 6

Section 6. Misleading Information

1. Am I required to disclose my ownership interest in the property being advertised?

- Legally, no
 - Selling your own home does not require a license
- There is an ethics requirement under the NAR Code of Ethics, Articles 4 and 5, for REALTORS®
 - If the property is owned wholly or in part by the REALTOR® under the status as owner/landlord, the licensee must be disclosed
 - This is also true regardless of whether the property is listed a the firm
 - A REALTOR® may not use the name of the real estate office in the advertisement if the property being sold is not listed with the office, as this would be misleading to the public
- If you are putting the property into the CRMLS platform, you must disclose your ownership interest on the MLS (CRMLS Rule 7.20)
- REALTORS® are obligated under Article 1 to follow the Close of Escrow in their own properties.

2. Can a real estate salesperson advertise him or herself as an “independent” real estate professional?

- No, a real estate salesperson cannot, under any circumstances, advertise him or herself out to be an “independent” real estate professional because all real estate salespersons must operate under a broker
 - Only a broker may advertise that he or she is an “independent” real estate professional
- A real estate salesperson cannot advertise as “John Doe Real Estate” as a business name when he/she is not a licensed real estate broker
 - This would be misleading to the public

3. What is considered “misrepresentation” or “misleading” information?

- Advertisements in any manner that contain false, misleading or deceptive statements regarding rates, terms or conditions for making, purchasing or negotiating loans or real property sales contracts
- If members of the public are likely to be deceived or misled (Article 12, CRMLS Rule 12.10.)
- A person does not need to show that he or she was actually deceived or confused by the misleading information to hold an agent or licensee responsible for misrepresentation
- Photographs in the CRMLS platform that do not convey a truthful representation of the property, including the interior of the property and/or property views
 - Photographs of surrounding areas near the property or of Home Owners Association (HOA) amenities must be captioned to indicate that the photographs are not part of the property or listing transaction (CRMLS Rule 11.5(f))

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Section 6

4. What are some examples of false and misleading advertisements?

- Advertisement can be interpreted a number of different ways as a result of vague or confusing language
- Advertisements containing “half-truths” or inflated claims
 - Example: “I am the #1 Broker in California”
- Actual falsity
 - Photoshopping or editing material characteristics of a property
- Inaccurate or misleading posts on social media

5. What are some of the penalties a violator may face for misleading advertisements?

- A violator is subject to imprisonment in the county jail for up to 6 months and penalties as high as \$2,500 per violation or both
- A real estate agent could be fined up to \$10,000 and face license suspension or revocation
- An Ethics or MLS violation that may include a fine of up to \$15,000 and/or other discipline

6. How can I avoid having a “misleading” advertisement?

- Avoid any half-truths and/or inflated claims
- If limitations are included in the advertisements containing offers, such limitations should be clearly stated in the advertisement
- Use disclaimers
- Present a “True Picture” standard of conduct in advertising or representations (CRMLS Rule 12.10 and Article 12 of the Code of Ethics)

7. Are there specific rules regarding internet advertisements?

- Yes, advertisements and domain names on the internet must present a clear and accurate picture of the content of the advertisements
- All internet links must be accurate
- The information must be kept current by the reasonable efforts of the REALTOR® or licensee and must be updated if any information expired, sold, or cancelled
- The intent to share or sell consumer information gathered via the internet must be disclosed
- All REALTOR® and licensees should beware of using another website’s information without permission

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Section 7

Section 7. Gifts, Prizes, and Referrals

1. Can the advertisement use the term “free” or offer any prizes?

- Yes, if all terms governing that offered free product or service are clearly disclosed in the advertisement.
 - Offering prizes, discounts, or other inducement is not unethical so long as terms are disclosed
 - Must disclose by how you are expected to be paid; the amount of payment; conditions
 - If you are receiving compensation from any source, you cannot use the word “free” or any other similar term in advertising.

2. May my advertisement offer a referral or finder’s fee?

- Fees to non-licensed individuals for leads might violate California law
- Could be in violation of federal law under the Real Estate Settlement Services Act (RESPA)
 - RESPA allows sharing commissions between agents and rebates of commissions to buyers/sellers, with some exceptions
- Questions as to advertising these fees will more than likely require analysis by an attorney

3. When are referral fees illegal?

- Referral fees are or may be illegal if four elements are met:
 1. Residential one to four
 2. Buyer will take occupancy or personal use
 3. Federally related loan
 4. Involves a settlement service
- Exceptions apply when:
 - Rebates of commission to a buyer or a seller
 - Brokers and agents may refer business to each other, and they are not acting in the capacity of a mortgage broker

4. What is a “settlement service”?

- A settlement service" is “any service provided in connection with a real estate settlement” (12 U.S.C. § 2602(3))
- Settlement service providers include, but are not limited to, the following:
 - Real estate agent or broker;
 - Escrow agent;
 - Title insurer;
 - Lender;
 - Credit reporting agency;
 - Appraiser;
 - Pest inspector;
 - Property surveyor; and

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Section 7

- Attorney

5. Under what circumstances may I never receive a referral fee?

- A real estate agent may not claim a referral fee for any of the following:
 - Escrow transaction
 - Structural pest control firm
 - Home protection company
 - Title insurer
 - Controller escrow company
 - Underwritten title company
- Exceptions to this rule include:
 - Payments for goods actually furnished, or for services actually performed, by a licensee;
 - Providing documents, services, information, advertising, educational materials, or similar items, as long as such items are:
 - Customary in the real estate business;
 - Related to the product or services of the furnisher; and
 - Available on a similar and essentially equal basis to all customers or the agents of the customers of the furnisher
 - Moderate expenses for food, meals, beverages, and similar items within a context of customary business, educational, or promotional practices pertaining to the business; and
 - Other promotional items customary in the real estate business, and available on a similar and essentially equal basis to all customers, or the agents of the customers

6. Am I legally allowed to advertise regarding real estate lotteries?

- A lottery is any scheme to distribute a prize by chance or luck among persons who have paid or promised to pay any valuable consideration for the chance of winning the prize
- A real estate licensee should use caution when conducting any special promotion that could be considered a real estate lottery
- In limited circumstances, real estate agents may use lotteries, raffles, and drawings as marketing tools
 - If there is no consideration paid to enter the game.
 - Or if the game is for a contest of skill rather than luck, then it is not considered a “lottery”

7. May I advertise my real estate lottery somewhere on the MLS listing?

- No
- The ability to gain additional compensation through a lottery is not allowed to be offered through the MLS
- The MLS listing may not contain any provision that varies the amount of compensation offered based on what occurs prior to or after “any performance, activity, or event” (CRMLS Rule 7.15)

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Section 8

Section 8. Discriminatory Advertisements

1. Am I allowed to advertise against a protected class of individuals under Federal law?

- Federal Law: No, a real estate licensee may not run any kind of advertisement concerning the sale, rental or financing of real property that indicates any preference, limitation, or discrimination because of:
 - Race
 - Color
 - Sex
 - Religion
 - Ancestry
 - Physical handicap
 - Marital status
 - National origin

(See also, Code of Ethics Article 10.)

2. Am I allowed to advertise against a protected class of individuals under California law?

- California Law (as of 2020): No, it is illegal for any person to advertisement, with respect to the sale or rental of a housing accommodation that indicates any preference, limitation, or discrimination based on:
 - Race (including hair texture and style)
 - Color
 - Religion
 - Sex
 - Gender
 - Gender identity
 - Gender expression
 - Sexual orientation
 - Marital status
 - National origin
 - Ancestry
 - Familial status (children under 18, pregnant, or becoming legal custodian)
 - Source of income
 - Military or Veteran Status
 - Disability (physical or mental)
 - Medical Condition
 - Genetic information or an intention to make that preference, limitation, or discrimination
 - Primary language*
 - Immigration status*
 - Age*
 - Citizenship*

*Established by the Unruh Civil Rights Act.

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3. As a REALTOR®, am I allowed to advertise against a protected class of individuals under NAR’s Code of Ethics?

- NAR Code of Ethics Article 10, Standard of Practice 10-3: No, REALTORS® shall not advertise with respect to the selling or renting of a property that indicates a preference, limitation or discrimination based on:
 - Race
 - Color
 - Religion
 - Sex
 - Handicap
 - Familial status
 - National origin
- These rules apply to every and any type of advertising that real estate licensees decide to use, including but not limited to, flyers, postcards, newspapers, magazines, “for sale” signs, billboards, business cards, e-mail, faxes, radio, and television

4. What words and phrases are not allowed?

Words that are allowed under the Fair Housing Act:	Words that violate the Fair Housing Act:
<ul style="list-style-type: none"> • Family room • Mother-in-law suite • Bachelor apartment • Master bedroom • Two bedroom • Great view • Fourth-floor walk-up • Walk-in closet • Walk to bus-stops • Jogging trails • Wheelchair ramp • Quiet street • Cozy • Rare find • Desirable neighborhood • Apartment complex with Chapel • Kosher meals available • No bicycle allowed • Non-smoking (conduct required of the resident) • Sober (conduct required of the resident) • Senior Community/Housing 	<ul style="list-style-type: none"> • White family home • No Irish • No Jews • Christian Home • No wheelchairs • No children • No toys in common areas • No elderly • No criminal record • No section 8 • No assistance animals

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Section 9

Section 9. Trademarks and Copyrights

1. What is a “trademark”?

- A trademark is a symbol, word, or words legally registered with the United States Patent & Trademark Office or established by the creator’s use as representing a company or product
 - “REALTOR®” is a registered trademark by the NAR

2. Can I use the term/logo “REALTOR®” in my advertisement if I am not a member of the NAR?

- No, the term REALTOR® can be used only by members of NAR.
- The term is not synonymous with real estate professional or the profession
- The DRE may suspend or revoke the license of a real estate licensee who willfully uses the term REALTOR® when he/she is not a member of NAR
- NAR may file a lawsuit against the non-REALTOR® for trademark infringement

3. How should the term/logo “REALTOR®” be used in my advertisements?

- Upper case letters and the federal registration symbol ® should always be used when using the term REALTOR®, REALTORS®, or REALTOR-ASSOCIATE®
 - The rule is different when advertising online
- The term REALTOR® should be separated from the licensee’s name or firm name by punctuation (i.e. a comma)
- The licensees should never use adjectives, geographic descriptions, or other descriptive words to modify the REALTOR® mark
- The REALTOR® logo should never be used as part of a firm’s business name, as the first letter of a word, or a team name
- The logo should never be combined with other symbols or altered in any other fashion, as it must be distinct and separate
- The REALTOR® logo should never be reduced to the point where the registration symbol ® is not legible
- It is important to review such rules with NAR’s Membership Marks Manual

4. What is a “copyright”?

- A copyright gives a person exclusive ownership rights over things that she or he creates
- Copyright protection extends to anything that is considered original and displays a minimal level of creativity

5. What is copyright infringement?

- Copyright infringement is the unauthorized use of a copyrighted work
 - This includes copying or distributing copies of a copyrighted work without authorization from the copyright owner or incorporating portions of a copyrighted work into another creation

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Section 9

6. What kinds of penalties and damages exist for copyright infringement?

- Severe criminal and civil penalties exist for copyright infringement such as:
 - Imprisonment from one to ten years
 - Monetary damages
 - Attorney's fees

7. How does copyright law affect social media?

- The real estate industry utilizes many copyrighted materials such as C.A.R. standard forms, REALTORS®' MLS listings, virtual tours, and photographs
- Posting copyrighted material, in whole or in part, on a social networking site without the permission of the copyright owner can create liability for copyright infringement
 - Linking to another website would most likely not be copyright infringement, such as when linking to an IDX Complaint website (See CRMLS Rule 12.16 and its subsections)

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Section 10

Section 10. Advertising on Social Media

1. What is “social media”?

- Social media is a collection of websites and applications that enable users to create and share content or to participate in social networking with other users via the Internet
- Social media includes sites like:
 - Facebook
 - Instagram
 - Twitter

 - Pinterest
 - TikTok

2. What information should I include in my social media bio, “about me” section, or posts?

- At minimum, you should include your name, your eight-digit DRE license number, and your brokerage firm
 - However, the DRE has stated that if your social media platform is subject to a character limitation (such as Twitter), at least put your DRE license number
- Provide information about your business, accreditations, certifications, sales history, reviews, contact information, links to your real estate website, etc. (See Question 4 below)
- Do not inflate any information about you or your brokerage as such information can be misleading to the public

3. Am I allowed to use “filters” or other imaging adjustments for my listings on social media?

- Yes, so long as the photographs and images do not misrepresent the property or mislead the public
- Do not exaggerate material features of the property to make it more appealing
 - For REALTORS®, such actions may violate the Code of Ethics, Article 12

4. Do I need to disclose the name of my firm when advertising through social media?

- Yes
- A REALTOR® must disclose the name of her or his firm in a reasonable and readily apparent manner when advertising real estate services or listed property in any medium
 - It must be either in the advertisement itself or, in electronic advertising, via a link to a display with all required disclosures
- The DRE requires real estate agents to include the license number, name, and some indicator of licensed status in any websites owned controlled and/or maintained by the real estate licensee
 - That information must appear directly in the advertising itself
 - It is not satisfactory to just provide a link to a display of that information

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Section 10

5. Do I have a duty to ensure that information posted through my social media is current and accurate?

- Yes, for REALTORS®
- REALTORS® have an ethical obligation to present a true picture in representations to the public; this includes any representations made using social media
 - REALTORS® must use reasonable efforts to ensure that posted information is current
 - REALTORS® are prohibited from deceptively using metatags, keywords, or other methods to direct, drive, or divert Internet traffic, or to otherwise mislead consumers (Code of Ethics Article 12, Standard of Practice 12-10)

6. May I post another member's listing on a social networking site?

- REALTORS® must receive written permission from the listing member prior to posting another member's listing on his or her social media
- Unless a REALTOR® receives prior written consent from the listing member, it is unethical to advertise another REALTOR'S® listings (see Code of Ethics Article 12 and Standard of Practice 12-4)
 - This is true even if the advertising is done on the Internet

7. Should I have a separate social media account for personal posts?

- There is currently no requirement that a real estate agent or REALTOR®, keep a separate business and personal social media account; however, it is strongly recommended by the DRE

8. Can I make "competitive" statements about other real estate agents on social media?

- Be cautious when writing about or featuring a fellow real estate agent, REALTOR® or client on social media in a negative way
 - In general, defamatory or false statements on social media about individuals on social media may lead to civil and criminal penalties
 - It is a violation of Article 15 of the Code of Ethics for REALTORS® to publish false or misleading statements about other real estate professionals in the industry (Standard of Practice 15-2)
 - A REALTOR® will also have the duty to publish a clarification or to remove statements made by others on electronic media the REALTOR® controls once the REALTOR® knows the statement is false or misleading (Article 15, Standard of Practice 15-3)

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Section 11

Section 11. Miscellaneous

1. **Can you summarize what I should be aware of regarding my advertisements?**
 - False or misleading content
 - License numbers
 - Team Name issues
 - Discriminatory content
 - Fair Housing violations
 - Clear Cooperation Rules
 - “Free”/prizes/referral advertisements
 - City and local advertisement ordinances
 - Use of REALTOR® logo/term

2. **What is not covered by these Frequently Asked Questions?**
 - Comparative Market Analysis and Appraisals prepared by you for your existing clients

3. **Where can I find additional information relating to advertising?**
 - Further questions relating to advertising, as well as regulations pertaining to subdivisions, mobile homes, mortgage loan brokers, credit products, short sales, mortgage relief services and more, can be found on the websites for:
 - NAR (www.nar.realtor)
 - C.A.R. (www.car.org)
 - DRE (www.dre.ca.gov)
 - CRMLS (www.go.crmls.org; <https://go.crmls.org/clear-cooperation-policy/>)