



REALTOR® CODE OF ETHICS

Revisions to Article 15

Effective January 1, 2008

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COMPLYING WITH ARTICLE 15 OF THE REALTOR® CODE

ARTICLE 15: ADVERTISING CLAIMS

“Claims or offerings in advertising must be accurate, clear and understandable.”

This requirement has existed unchanged for many years. The difference in the 2006 version of the REALTOR® Code is that the revised Interpretations to Article 15, (copied below) set out specific details of what must be included in certain types of advertising.



Interpretation 15.1

Advertising of Compensation shall include the details of the services provided and whether any additional charges may apply. If the services to be provided for the advertised Compensation does not include Listing on MLS®, a statement to that effect must be included.



Interpretation 15.2

Representations of performance (e.g. "#1", "top-selling", etc.) must include the geographical area referred to, the relevant time-frame (e.g. January- June, 2004) and the source or basis on which the claim is based (e.g. based on the number of sales on the MLS® system of the relevant Board for the specified time period).



Interpretation 15.3

Advertising of programs, initiatives or guarantees (e.g. "Buy a house with 0% down", "If I don't sell your house, I will buy if from you", etc.) must clearly set out all significant details of how the program works, including, but not limited to, exceptions and time frames.



Interpretation 15.4

Significant conditions, restrictions, limitations and additional charges shall be fully and prominently displayed in the body of the advertisement near the claim or offering and shall comply with all applicable laws. In no event shall the size of the font used for this purpose be less than one-half of the font used to advertise the claim or offering.



Interpretation 15.5

A condition, restriction, limitation or additional charge shall be considered "significant" if it would likely affect a consumer's decision to retain the REALTOR®/brokerage.



Interpretation 15.6

Any claims or offerings in advertising must also comply with all applicable laws, including the Competition Act.



Interpretation 15.7

Interpretation 13.1 applies to Article 15.

THE PRATICAL EFFECT OF ARTICLE 15 IS THIS: All advertising, regardless of its nature, must prominently display all significant conditions, limitations, and additional charges relating to any offer or promotion.

A GOOD QUESTION TO ASK YOURSELF IS: When average consumers read my advertisement, are they adequately informed about all of the things that are important to them, including any additional costs, what costs may be significant, what they are getting for their money, and how the program works before contacting me? If not, the advertisement may run afoul of Article 15.

In addition to the general advertising requirements, Interpretations 15.1-15.3 set out specific information required if the advertising falls into one of the following categories:

- Compensation Advertising
- Performance Advertising
- Program Advertising

COMPENSATION ADVERTISING

Compensation advertising is advertising that includes the amount being charged for your services –for example “List your home with us for \$699.00”, or “I will help you find your next home for “\$699.00”.

There are five Interpretations that would apply to such advertising, namely 15.1, 15.4, 15.5, 15.6, 15.7

Compensation Advertising must include:

- 1. Details of the broker services** not covered by the advertised compensation.
 - Typical consumers expect that a broker’s advertised price for a property listing includes performing a comparative market analysis, listing the property for sale on a Board’s MLS® system, marketing the property, showing the property to prospective buyers, receiving, presenting and negotiating offers and generally representing the seller in the sale process. If any such services are not covered by the advertised price, then either:
 - (a) their exclusion should be stated; or
 - (b) the services that are provided should be listed
- 2. If the advertisement involves your services** in listing a property, and the listing will not be placed on the Board’s MLS® system or will not be placed on the Board’s MLS® system for the fee advertised, a statement to that effect must be included.
 - If the service does include placing the listing on the Board’s MLS® system, it is not necessary to specifically state that fact.
- 3. A statement** as to whether any **additional charges** may apply. If those charges are “significant”, the details of the charges must be set out.
 - **“Significant”** is defined in Interpretation 15.5. Anything that would likely affect a consumer’s decision to retain the services of the REALTOR® or brokerage is “significant”.
 - If the consumer will not be subject to any additional expenses whatsoever, it is not necessary to specifically say so;
 - If the additional expenses are nominal only (such as photocopying, faxes or other similar out of pocket expenses), a statement that additional expenses may (will) apply is sufficient;
 - If any potential expenses are “significant”, more details regarding those expenses must be provided. For example, a broker, in advertising the amount he or she charges to list a property, must advise consumers of the possibility of having to pay a commission to a broker representing a buyer, which is over and above the compensation advertised. In this case, because of the potential size of this expense, it is not sufficient merely to say that additional charges may apply.
- 4. The details** of any other “significant” conditions, restrictions or limitations.
- 5. Any conditions, restrictions, limitations or additional expenses** must be displayed prominently in the advertisement in font that is not less than one half of the size of the font used in the advertisement.

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CASE STUDY

ABC Realty offers a series of service packages tailored to the needs of particular sellers, ranging from full agency representation to assisting sellers who wish to manage the sale of their house themselves.

The 3 service packages available to sellers are as follows:

1. Full agency Representation which includes:

- Comparative Market Analysis
- Conducting open houses and showing the property to prospective buyers
- Receiving and presenting offers
- Agency Representation
- Negotiating offers on behalf of the seller
- Generally providing the seller with professional advice and assistance throughout the transaction
- Listing the property on the Board's MLS® system
- Advertising the property on the company's website
- Advertising in local newspapers and real estate publications

Cost -3% of sale price. (No other cost to seller.) ABC Realty assumes all marketing expenses and pays any co-operating commission.

2. The Flexible Plan which includes these "base" services:

- Comparative Market Analysis
- Receiving and presenting offers
- Agency Representation
- Referring prospective buyers to seller
- Listing the property on the Board's MLS® system
- Advertising on the company's website

Cost -\$1,000.00 (does not include any co-operating commission.)

Under this plan, other services, such as conducting open houses, offer negotiation, and additional advertising are available on a "cost-per-service" basis.

3. The "Do-it-Yourself" Plan includes:

- Comparative Market Analysis
- Signage
- Highlight Sheets for completion by seller;
- Agreement of Purchase and Sale Forms
- Advertising on the company's website

Cost \$499.00 All expenses of advertising and co-operating commission (if applicable) are the responsibility of the seller

Sample Advertising of ABC Realty

I. "List your home with us for as little as \$499.00".

A. Is this advertisement acceptable?

NO! This would not be sufficiently detailed to meet the requirements of Article 15.

B. What's Missing?

There are 3 important disclosures that are missing from this ad.

- 1. If the price advertised includes only a limited number of brokerage services, then the ad must say something about that fact.** It can set out the services provided or it can set out the services not provided, as long as it is clear to consumers what they are getting. The ABC Realty \$499.00 "Do-it-Yourself" package is very basic, and the advertisement must advise consumers exactly what services are provided for that money.
- 2. If the price advertised does not include listing the property on a Board's MLS® system, the ad must say so.**
- 3. The fact that other charges may apply must be stated.** Also, since the additional charges may include the seller paying a co-operating commission, that would represent a "significant" charge and the details of any significant charges, conditions or limitations must be set out.

C. How Should ABC Realty Include These Disclosures In The Advertisement?

Examples of Disclaimers that are NOT ACCEPTABLE

- (a) "List your home with us for as little \$499.00"*
*Call for more details

The details must be included within the body of the advertisement itself. It is not sufficient to simply give contact information.

- (b) "List your home with us for as little as \$499.00"*
*other additional charges may apply

As sellers under this program are responsible for all costs, including advertising, and as the sellers will have to personally pay any co-operating commission, (if applicable) there are "significant" charges that must be identified in the advertisement itself.

- (c) "List your home with us for as little as \$499.00"*
*buyer agent commission may be an additional charge

In view of the fact that any co-operating commission may far exceed the amount advertised for compensation, it is incumbent on ABC Realty to inform consumers that they may be liable for a significantly larger cost. Also, this disclaimer does not address the other matters that must be disclosed.

- (d) "List your home with us for as little as \$499.00"*
*significant other charges may apply, which may include buyer agent commission



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This disclaimer is acceptable in dealing only with the issue of additional charges. As co-operating commission is highly variable, it cannot be defined, but a statement informing the consumer that they may be liable for expenses that far exceed the advertised compensation must be included. However, it does not deal with the other matters that must be disclosed.

Example of **ACCEPTABLE** Disclaimers

"List your home with us for as little as \$499.00"

*price only includes lawn signs, highlight sheets and access to forms and advertising on company's website

**price does not include placing the listing on the MLS® system of a real estate board

***significant other charges may apply, which may include buyer agent commission and [specify others].

Note that the disclaimers deal with the 3 areas of clarity
– services provided, the fact that there is no MLS® listing, and the fact that there may be other significant charges.



II. **"We will list your home on the MLS® system for as little as \$1,000.00"**

As with the example above, this advertisement requires information regarding the services included in the price and the possibility of other significant charges.

"We will list your home on the MLS® system for as little as \$1,000.00"

*price includes CMA, receiving and presenting offers, referring prospective buyer to you, and advertising on company's website

**other services available at additional cost

***significant other charges may apply, which may include buyer agent commission and [specify others].

III. **"Full service listing for 3% of sale price"**

As this offering contains no restrictions in terms of services provided and includes all expenses, including any buyer agency commission, it is not necessary to qualify the advertisement with any disclaimers.

IV. **"Every seller is unique. Choose from one of our 3 service packages or customize your own."**

An advertisement like this may be acceptable (depending on the circumstances) without any disclaimers. It does not fall within the "Compensation Advertising" umbrella, as the ad does not talk about compensation. Further, while it is arguably "Program Advertising" (discussed below) it is distinguishable from programs like "If I don't sell your house, I will buy it". The test is whether the statement can stand accurately on its own. There is nothing inherently misleading in the statement "Choose from one of our 3 service packages". However, an advertised program like "If I don't sell your house, I will buy it" cannot stand on its own as there are inevitably significant terms of that offer that must be disclosed in the advertisement.

PERFORMANCE ADVERTISING

Performance advertising is advertising in which the REALTOR® makes claims of having achieved certain levels of production or performance in the marketplace (e.g. "top-selling", "#1 agent", "top producer" etc...)

Applicable Interpretations 15.2, 15.4, 15.5, 15.6, 15.7

Performance advertising must include:

1. The geographical area referred to (e.g. city of Regina, North Vancouver, province of New Brunswick...);
2. The relevant time frame (e.g. 2007, January 1-June 30, 2006 etc...);
3. Basis of the claim (e.g. based on MLS® sales as reported from the Board's MLS® system, etc...)
4. Any other significant conditions, restrictions, limitations or additional charges.

EXAMPLE:

"Top Selling Agent"**

*based on total MLS® sales as reported by the Ottawa Real Estate Board for the city of Ottawa for 2006

PROGRAM ADVERTISING

Program advertising is advertising that includes reference to programs, incentives or guarantees offered by the REALTOR® (e.g. "If I don't sell your house, I will buy it from you.")

Applicable Interpretations 15.3, 15.4, 15.5, 15.6, 15.7

Performance advertising must include:

1. All significant details of how the program works, including any exceptions and time frames.
2. Any other significant conditions, restrictions, limitations or additional charges.

As stated above, "significant" refers to anything that would likely affect a consumer's decision to retain the brokerage.

As an example, if you are advertising that you will buy a client's house if you are unable to sell it, some of the significant information that must be in the advertisement would include:

1. How long must the house be on the market before this offer becomes effective?
2. How is your purchase price determined?
3. What other significant exceptions and time frames apply to this offer?

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EXAMPLES:

"If I don't sell your house, I will buy it from you"**

*call for details

NO! The significant details must be included within the body of the advertisement itself. It is not sufficient to simply give contact information.

"If I don't sell your house, I will buy it from you"**

*some conditions apply

NO! The significant details must be included within the body of the advertisement itself.

"If I don't sell your house, I will buy it from you"**

*minimum listing period of _____ applies

**purchase price is calculated _____

*** (any other significant conditions, restrictions or limitations)

YES, provided all significant facts are included.

Combining Different Types of Advertising

An advertisement may include more than one category of advertising. It may be compensation advertising, as well as program or performance advertising. The example below is compensation advertising, but a "0% commission" offering, is also a program, that is subject to conditions and restrictions. The details of that program must also be included in the body of the advertisement

"List with us and pay as little as 0% commission"**

*significant other charges may apply, which may include any buyer agency commission payable and [specify other charges]

**0% commission is payable when ___ [specify circumstances]

This disclaimer would be acceptable if the realty firm is providing full broker service, the property is being listed on the board's MLS® system, and there are no other significant details. Otherwise, these limitations must also be included.



Any questions or comments about the service or products CREA provides?
You can contact us on-line at info@crea.ca.

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