

BUSINESS ETHICS FOR \$200 ALEX...

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If “Business Ethics” was a category on the Jeopardy board, it would probably be the column most likely to be selected last. Often intellectually unsatisfying, and always emotionally and morally perplexing, the ethical obligations that surround a particular profession have been known to confound even the most morally upright of men and women.

In some ways, however, REALTORS® do have a head start. Unlike many professions where you have generalized ethical boundaries presented to operate within, the REALTOR® Code of Ethics presents a relatively specific analysis of possible ethical quandaries that members should avoid. Accompanying the Code of Ethics, REALTORS® also have Standards of Practice and Case Studies to offer more direct interpretations of ethics questions.

In this column, I’d like to focus on one specific article in the code that seems to be raising questions for members: Article XII - Advertising. As you can plainly observe for yourself, advertising has come a very long way and taken on many forms in America. There are various schools of thought when it comes to advertising. Is it truly “the poetry of capitalism,” as Michael Maynard, an Associate Professor at Temple University, once said? Or is it, as H.G. Wells put it, merely “legalized lying?” The answer to that question would definitely have to lie in the recesses of personal experience. The consumer, having been led down the primrose path only to be ripped off by a shoddy product or service, would probably side with H.G. Wells. However, in a capitalist society such as ours, advertising is an indispensable component of the free market. As such, there is the stark reality that certain advertising may be viewed as patently unethical and misleading but

still withstand legal scrutiny. Looking at it another way, there are ways that real estate brokerages may advertise that are legal under Michigan law. However, these same methods may be unethical and forbidden under the REALTOR® Code of Ethics.

SUPPLEMENTING STATE LAW

More and more REALTORS® are operating under the assumption that license law and the association’s Code of Ethics are in complete harmony. This is simply not the case. Michigan licensing law, as it pertains to advertising by real estate brokers and salespersons, leaves many areas a nice shade of gray. Advertising is addressed for real estate brokers and salespersons in the “Red Book” under Rule 339.22329. First and foremost, it is a limited resource for members. The rule bluntly states:

1) Except as provided in subrule (2) of this rule, all advertisements to buy, sell, exchange, rent, lease, or mortgage real estate or business opportunities by a broker shall include the broker’s name as licensed and telephone number or street address. All advertising shall indicate affirmatively that the party advertising is a real estate broker.

(3) Except as provided in subrule (4) of this rule, advertising by a salesperson or an associate broker shall be under the supervision of, and in the licensed name of, the individual’s broker.

A supplement of the scope and limitations of advertising for REALTORS® is found in Article XII of the Code of Ethics and Standards of Practice.

The following three analyses are intended to clarify some of the common misconceptions surrounding advertising and marketing for REALTOR® members.

1. PRESENTATION OF THE BROKERAGE.

“...include the broker’s name as licensed and telephone number or street address.”

In the past year, this rule has been the subject of many phone calls to the MAR and to the legal hotline. Based on these calls, it became clear that the scope of advertising in the real estate industry had begun to take a fairly dramatic turn – more and more members were playing fast and loose with the vagueness of the above rule. For instance, the broker’s name and contact information began to shrink drastically, while additional contact information for the salesperson began to grab the eye with increased font size and bold presentation. In many ways, this trend can simply be qualified as an honest mistake. The Michigan Department of Labor and Economic Growth (“DLEG”) has given a wide-ranging number of interpretations of how a brokerage’s information must be presented to the public. Yet, in the absence of express language about font size and presentation, it is not difficult to see why a licensee would try to gain an advantage.

Irrespective of the confusion that arises from Michigan law, the rule for members is addressed clearly in the Code of Ethics and Standards of Practice. A plain reading of Standard of Practice 12-5 indicates that an ethics violation may occur if the member advertises “without disclosing the name of that REALTOR®’s firm in a reasonable and readily apparent manner.” Standard of Practice 12-9 reiterates the requirement that the Brokerage be presented in a “reasonable and readily apparent manner.” While DLEG has shown an acceptance of licensees who provide additional information beyond the



required Brokerage name and contact information (i.e. additional contact information for the listing agent), a member would do well to consider the presentation of their advertisement within the parameters of the Code of Ethics. Analyzing each of your planned advertisements on a case-by-case basis, the standard for what is reasonable and readily apparent to a viewer is very subjective. It is better to err on the side of caution than to be called to answer on an ethics violation.

2. PRESENTATION OF THE PROPERTY

Present to the public "a true picture."

Quite simply, an advertisement should give a true description of the property. This not only applies to the brick and mortar aspect of the home but also the location of the home. The intent to mislead a prospective buyer is obviously a harbinger for ethics violations to come. While an inadvertent error in description is worthy of a second chance, persistent exaggeration and misrepresentation of a property in an advertisement is foolhardy. One example can be found in describing a listing's proximity to noteworthy attractions. There is a significant problem with advertising that your property is in a particular zip code when it is, in fact, located in a different zip code – especially when there is a particular status element associated with the zip code. Or, saying that your property is in walking distance to Comerica Park, when in fact it is 10 miles away and requires crossing a freeway. Lest you think that these issues are simply too commonsensical to actually create a problem, I recommend reading through the case interpretations for Article 12. You'll see instances where ethics complaints were brought against REALTORS® for exaggerating distances, square footage, a structure's age, improvements, access points, property tax figures, etc. Reading through the case studies, I think you'll recognize that some of them aren't even egregious. However, they amounted to an ethics violation.

Business Ethics

\$100

\$200

\$300

\$400

\$500

3. SELF-AGGRANDIZING

Are you truly the Real Estate King?

Self-aggrandizement in advertising is another potential pratfall for members to be wary of. Making the claim that you or your brokerage is #1 is not uncommon in the real estate industry. However, be careful that such a claim doesn't create an unrealistic expectation for your client. Additionally, be mindful that you may have competitors that can actually back it up. For example, an advertisement that claims you were the top seller by volume in your county during the prior year based not upon MLS data but on your own unique counting system, could leave you open to claims of unethical conduct. Of course, if you or your brokerage is in a position to brag, there are certainly ways to market your highlights. Stick with the actual achievements that you wish to highlight. There is no problem touting that you are the #1 brokerage during a particular time period if it's true.

CONCLUSION

The public perception of a business transaction or relationship, especially one that doesn't go smoothly, is an important vantage point from which to view the effect of your advertising. When consumers do call MAR or a local association in search of an understanding of whether the angry feeling that they have been harboring regarding interaction with a member, it is often accompanied by the words "ethics violation". Of course, analyzing an ethics complaint is not something you do over the phone. In fact, The National Association of REALTORS® reserves to itself the exclusive right to interpret the Code of Ethics. However, in the absence of checking each of your advertisements with NAR, awareness of such a perception from your customer base should be enough to keep you on your guard, doing the best you can to give the kind of service that leaves little room for misinterpretation or confusion from the consumer's perspective. **MAR**