

# nova scotia real estate COMMISSION

— ADVERTISING GUIDELINES —

- Basic rules
- Advertising checklists
- The Competition Act
- Mandatory advertising components
- Conduct and trade practices
- Incentives, promotions and the Real Estate Trading Act
- False or misleading advertising
- Advertising and the Internet
- Joint advertising
- Performance guarantees
- The broker's responsibility
- Terms and conditions
- Commission sharing
- Awards and claims advertising
- And much, much more



## NOTE TO READERS

It is understood that the principles set out in this document are not binding on the Nova Scotia Real Estate Commission (NSREC) Discipline Committee. However, abiding by them will considerably reduce the risk of being the subject of a complaint regarding professional advertising by real estate brokers and salespeople.

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# CONTENTS

<b>INTRODUCTION</b> .....	<b>5</b>
Guidelines .....	5
The broker is ultimately responsible .....	5
<b>BUSINESS NAMES</b> .....	<b>7</b>
Choice of name .....	7
Practical aspects of your name selection .....	8
<b>BASIC RULES</b> .....	<b>9</b>
Mandatory components .....	9
Summary tables of mandatory components .....	9
Advertising examples .....	11
Other components .....	16
Supplementary rules for franchise agreements .....	16
<b>CONDUCT AND TRADE PRACTICES</b> .....	<b>17</b>
The Competition Act .....	17
False or misleading advertising .....	18
Statements that may create confusion regarding name, trademark, slogan or logo .....	21
Web addresses .....	21
Verifiable and quantifiable identification statement .....	21
Professional affiliations .....	22
Professional designations .....	22
Education and other training .....	22
Corporate clubs .....	22
Specialist designations and areas of practice .....	23
Comparative advertising .....	23
Number of years of experience .....	25
Combined years of experience .....	25
Recruitment advertising .....	26
Earning potential .....	26
Management opportunities .....	27
Education and training .....	27
<b>ADVERTISING AND THE BROKERAGE</b> .....	<b>29</b>
Basic rules .....	29
Using another Industry Member's listing-cut sheets .....	29
In the absence of a brokerage contract .....	30
Advertising after a brokerage contract expires .....	30
Advertising completed transactions .....	31
The SOLD notice .....	31

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<b>JOINT ADVERTISING</b> .....	<b>35</b>
Joint advertising with non-industry members .....	35
Team advertising .....	35
Joint advertising by franchises .....	37
<b>ADVERTISING AND THE INTERNET</b> .....	<b>39</b>
Keep information on Web sites current .....	39
Allowing third parties to display on a broker or salesperson's Web site .....	40
Hyperlinks .....	40
<b>PROMOTIONS AND INCENTIVES</b> .....	<b>43</b>
Promotional contests .....	43
Incentives, gifts, and commission sharing .....	43
Compensation reductions and other benefits. ....	43
Incentives: brokerage practices. ....	44
Performance guarantees .....	45
Promotion offered by a third party .....	45
<b>LICENCE STATUS AND ADVERTISING</b> .....	<b>47</b>
Advertising without a valid licence. ....	47
Real estate broker's responsibility .....	47
Length of the suspension .....	48
<b>ADVERTISING CHECKLISTS</b> .....	<b>49</b>
General advertising checklist .....	49
Team Advertising checklist. ....	49
Awards and claims advertising .....	50
Promotions and incentives. ....	50
Terms and conditions .....	51
"For Sale" and "Sold" Properties .....	51

# CHAPTER 1:

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## INTRODUCTION

The Real Estate Trading Act and Commission By-Law, which came into effect on January 20, 1997, contain rules regarding advertising. These rules are part of what the Supreme Court of Canada has identified as the two main objectives of regulating professional advertising:

- To maintain a high standard of professionalism for the profession, as opposed to commercialism.
- To protect the public from irresponsible and misleading advertising.

Real estate brokerage is governed by specific legislation whose prime objective is to maintain consumer confidence by overseeing the activities of brokers and salespeople based on rules of conduct arising out of professional law. This aspect must be taken into account when interpreting the Real Estate Trading Act.

The practices used must be consistent with the requirements of the Real Estate Trading Act and By-Law and reflect the high degree of professionalism that Industry Members are required to uphold. These requirements apply to both commercial and residential real estate.

### GUIDELINES

This document does not contain the answer to every question about advertising. Its purpose is to provide guidelines to help Industry Members advertise correctly and to identify and avoid advertising in breach of the rules contained in the Act and By-Law.

### THE BROKER IS ULTIMATELY RESPONSIBLE

Industry Members must know the rules regarding real estate advertising and are individually responsible for abiding by these rules. However, given the current structure of real estate brokerage in Nova Scotia, salespeople are not fully autonomous from a legal standpoint. They carry on their activities as employees of brokers or as persons authorized to act on the brokers' behalf (contractors). Therefore, brokers have special responsibilities as employers to oversee the work of the salespeople carrying on ac-

tivities on their behalf. Brokers must take all reasonable means to make sure that the people they employ comply with the provisions of the Real Estate Trading Act and the Commission By-Law. Brokers must therefore ensure that their own advertising and any advertising done on their behalf by their salespeople is consistent with the rules.

# CHAPTER 2:

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## BUSINESS NAMES

Brokers can operate brokerages under a company name only. Although businesses can operate under several names, a brokerage can operate only under a single name because the use of several names can create confusion.

A brokerage license displays the name under which the broker has chosen to operate.

### CHOICE OF NAME

Brokers must use the Commission naming conventions when naming their brokerage. The brokerage names must not be:

- the same as another brokerage
- immoral, obscene or scandalous
- shortened from its legal form where required by law (for example, Inc. or Ltd.)
- capable of leading someone to falsely believe that the business is a non-profit group
- capable of leading someone to falsely believe that the business is or is connected to a public authority
- capable of leading someone to falsely believe that the business is connected to another (for example, affiliated)
- identical to or easily confused with the name of another business
- misleading (for example, it must not inaccurately describe the business's activities)

To avoid having the same name as an existing business or a name that can be confused with an existing business, the Registrar requires applicants to register the brokerage name with the Nova Scotia Registry of Joint Stocks and record the registration number on the license application.

The Commission staff can also tell you whether the name you want is already being used by another brokerage or if the name is too similar to an existing one and risks creating confusion.

In the case of franchising, you must obtain written permission from an authorized representative of the franchiser regarding the use of names and trademarks. This writ-

ten authorization does not exempt you from registering the name with the Registry of Joint Stocks or obtaining approval from the Registrar.

### **PRACTICAL ASPECTS OF YOUR NAME SELECTION**

A broker selecting a brokerage name must keep a few practical aspects in mind. The Commission recommends that you choose a name that is not too long, because under the Act, all advertising must include the full name of the brokerage as it appears on the brokerage license. The broker and their salespeople must include the brokerage name in all advertising and cannot use a short form even if, under certain circumstances, it would seem desirable to do so.



# CHAPTER 3:

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## BASIC RULES

### MANDATORY COMPONENTS

The Commission By-Law specify mandatory components that must appear in any advertising, solicitation of clients, or representations. These mandatory components are summarized in the following tables.

These requirements must be followed by all Industry Members even if the method of communication is operated by a third party. The Canadian Real Estate Association's (CREA) Multiple Listing Service® (MLS) is an example of a method of communication by a third party.

### SUMMARY TABLES OF MANDATORY COMPONENTS

The following tables summarize the mandatory components that must appear in each type of advertising medium. While not mandatory, the Commission recommends Industry Members specify their class of license on promotional materials.

**ATTENTION: Independent contractors are governed by the same rules as employees.**

### BUSINESS CARDS AND LETTERHEADS

<b>Real estate brokerage</b>	<b>Industry Member</b>
<ul style="list-style-type: none"><li>• complete name exactly as it appears on the license</li><li>• phone number and address of the principal office in Nova Scotia (head office) or any other office</li><li>• if the broker is a franchisee, the name of the franchiser and the fact that he/she is a franchisee independent and autonomous from the franchiser</li></ul>	<ul style="list-style-type: none"><li>• complete name exactly as it appears on the license</li><li>• complete name of the employing brokerage</li><li>• brokerage phone number</li><li>• if the employing brokerage is a franchisee, the name of the franchiser and the fact that the franchisee is independent and autonomous from the franchiser</li></ul>

**PERIODICALS\***

<b>Real estate brokerage</b>	<b>Industry Member</b>
<ul style="list-style-type: none"> <li>complete name exactly as it appears on the license</li> </ul>	<ul style="list-style-type: none"> <li>complete name exactly as it appears on the license</li> <li>complete name of the employing brokerage</li> </ul>
<p>*Includes newspapers, magazines, Yellow Pages™, and business white pages in phone directories and Internet classifieds</p>	

**SIGNS\***

<b>Real estate brokerage</b>	<b>Industry Member</b>
<ul style="list-style-type: none"> <li>complete name exactly as it appears on the license</li> </ul>	<ul style="list-style-type: none"> <li>complete name exactly as it appears on the license</li> <li>complete name of the employing brokerage</li> </ul>
<p>*Signs may include the phone numbers where a salesperson can be reached, such as a cell phone number.</p>	

**ATTENTION: You cannot place a promotional signage at a personal residence unless the location is registered as a branch office.**

**OTHER ADVERTISING, SOLICITING OR REPRESENTATION\***

<b>Real estate brokerage</b>	<b>Industry Member</b>
<ul style="list-style-type: none"> <li>complete name exactly as it appears on the license</li> </ul>	<ul style="list-style-type: none"> <li>complete name exactly as it appears on the license</li> <li>complete name of the employing brokerage</li> </ul>
<p>*Includes e-mail, fax, television, radio, circulars, broker or agent Web site, Web site owned or controlled by a third party, and so on.</p>	

**TERRITORY STATEMENT FOR WEB SITES**

The Internet does not recognize boundaries or jurisdictions and as a result, any advertising, client solicitation, or representations related to trading in real estate may be viewed by anyone anywhere in the world. The Commission recommends using the following statement to reduce the risk of illegal solicitation of clients in territories where the Industry Member is not authorized to pursue trading activities.

**“ \_\_\_\_\_ is authorized to trade in real estate in the province of Nova Scotia.”**

## ADVERTISING EXAMPLES

The five main rules of mandatory statements in real estate advertising are:

1. The brokerage name and salesperson name must appear on all advertising. The names must be clearly displayed and easily identifiable (cannot be confused with another brokerage or another salesperson).
2. The advertising must not, in any way, lead a person to believe that a real estate trade being advertised is a private sale.
3. The wording in the name, brand, slogan or logo must demonstrate clear meaning and be verifiable and quantifiable. See “Verifiable and quantifiable identification statement” on page 21 for more information.
4. The brokerage name must appear as one name, that is to say, do not separate the various components of the name in a way that might falsely suggest that a sub-franchised brokerage, a sub-franchising brokerage, and a provincial franchiser form a single brokerage firm. For more information about advertising in a franchising environment, see “Supplementary rules for franchise agreements” on page 16.
5. Do not use abbreviations for classes of licences.

## BUSINESS CARDS

The following example shows a salesperson licence and the salesperson business card that meets the requirements for mandatory statements in advertising.



## SIGNS

Signs must obey specific laws and regulations. You need to verify local regulations, condominium rules, and the law on roadside advertising before erecting signs. You can verify these regulations with the appropriate authorities, such as municipalities, condominium syndicates and the Department of Transportation and Infrastructure Renewal.

The phone number is not necessarily the brokerage phone number, it can be your home phone or cell phone.

The following example meets the requirements for mandatory components and complies with the rules of advertising.



## PERIODICALS

This section gives examples of ads in periodicals, which includes newspapers, magazines, Internet classifieds, Yellow Pages™, and business white pages in the phone directory. You do not need to include your class of licence, your brokerage address or phone number in periodical advertisements, however, you do need to include your name and the name of your brokerage exactly as it appears on your licence. It should be clearly apparent from reading the advertisement that the property is listed with a brokerage and being sold by an Industry Member. The following ads meet regulatory requirements:

NEWSPAPER CLASSIFIED EXAMPLE

<b>City</b> REAL ESTATE	<b>Rural</b> REAL ESTATE	<b>Suburban</b> REAL ESTATE	<b>Vacant land</b> REAL ESTATE
<p><b>East Coast</b>  REALTY</p> <p>14 Hawthorn St. West end. Beautiful semi-detached. Many upgrades including windows, floors. Won't last. \$144,900. MLS®</p> <p style="text-align: center;"><b>Janet Doe</b> 555-3698</p>	<p>Spacious, warm, bright country home. Miles of nature trails. Finished lwr. level for in-law or teen retreat. \$179,900. MLS®</p> <p style="text-align: center;"><b>Jim Smith, FRI</b> 555-3698</p> <div style="border: 2px solid red; padding: 5px; text-align: center; color: white; font-weight: bold;">       Red Hot Real Estate     </div>	<p style="text-align: center;"><b>XYZ Atlantic</b> <small>Independently owned and operated</small></p> <p>Upgraded 3 BR bungalow in sought after Newton Park. Renovations too numerous to capture on ad. \$199,900 MLS®</p> <p style="text-align: center;"><b>Jane Smith</b> 555-3698</p>	<p>50 acre wood lot. Includes two-room hunting camp, and 200 ft. waterfrontage on McKinnon and Kimball Lakes. Guysborough Co. \$149,900 MLS®</p> <p style="text-align: center;"><b>Bob MacDonald</b> 555-3698 <b>Assisted Sales Ltd.</b></p>

FREE INTERNET CLASSIFIED EXAMPLE

Free local classifieds   All Ads ▾

[Halifax](#) > [housing](#) > [housing for sale](#)

**House for sale - Anytown**  
**Price \$366,000**

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<p><b>Bedrooms:</b> 4 <b>Bathrooms:</b> 3.5 <b>Size:</b> 2700 sq/ft</p>	<p><b>Address:</b> 8 North Street Anytown, NS <b>Date listed:</b> 22-Feb-09</p>	<p><b>Contact poster by email</b> Your Email <input style="width: 100%;" type="text"/></p> <p>Message <input style="width: 100%; height: 40px;" type="text"/></p> <p>Verification code <input style="width: 50px;" type="text"/> Enter code <input style="width: 50px;" type="text"/></p> <p style="text-align: center;"> <input type="button" value="Send"/></p>
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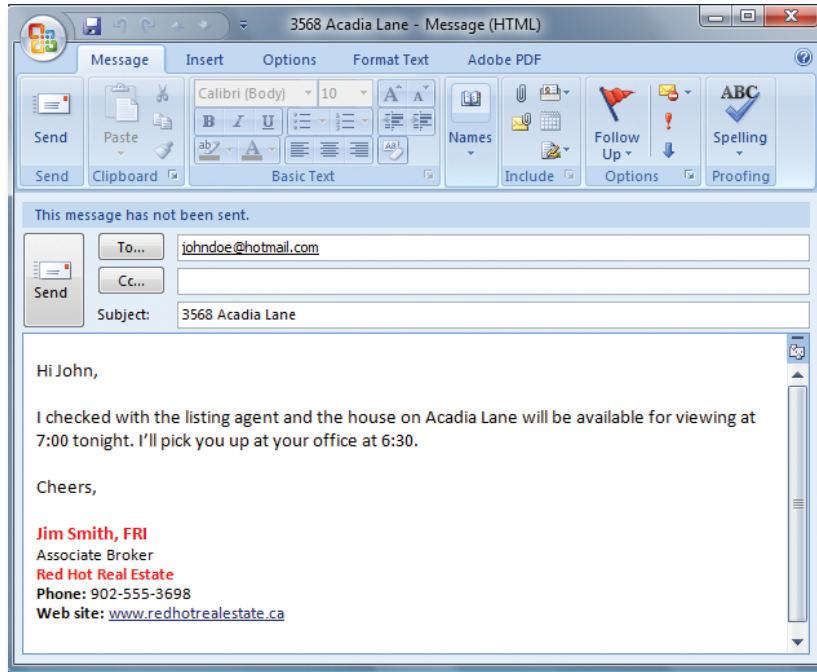
This property is being sold by **John Smith** of **XYZ Atlantic Realty Ltd.** For inquiries or to view, please contact JohnSmith at (902) 555-7283 or email John at [john.smith@xyzatlantic.ca](mailto:john.smith@xyzatlantic.ca). You can also view this property at [www.realtor.ca](http://www.realtor.ca), MLS® number: **85740007**

**8 North Street**  
Dartmouth NS,  
B3A 3N0  
Lovely 2700 square foot, four bedroom, three-and-a-half bath, split-level home with double-attached garage on a corner lot. Home is located on a bus route and within walking distance to Woodside ferry.

[View poster's other ads](#) | [Watch this Ad](#) | [Print Ad](#) | [Email this Ad to friends](#)

## E-MAIL

The following e-mail example complies with the requirements for mandatory statements.



Most e-mail programs offer a signature feature, which permits you to automatically add a signature to all e-mails. While not required, the Commission recommends you add a confidentiality clause to the bottom of your e-mails. You can add the confidentiality clause to your e-mail signature, so the clause appears automatically. The following statement is a suitable confidentiality clause:

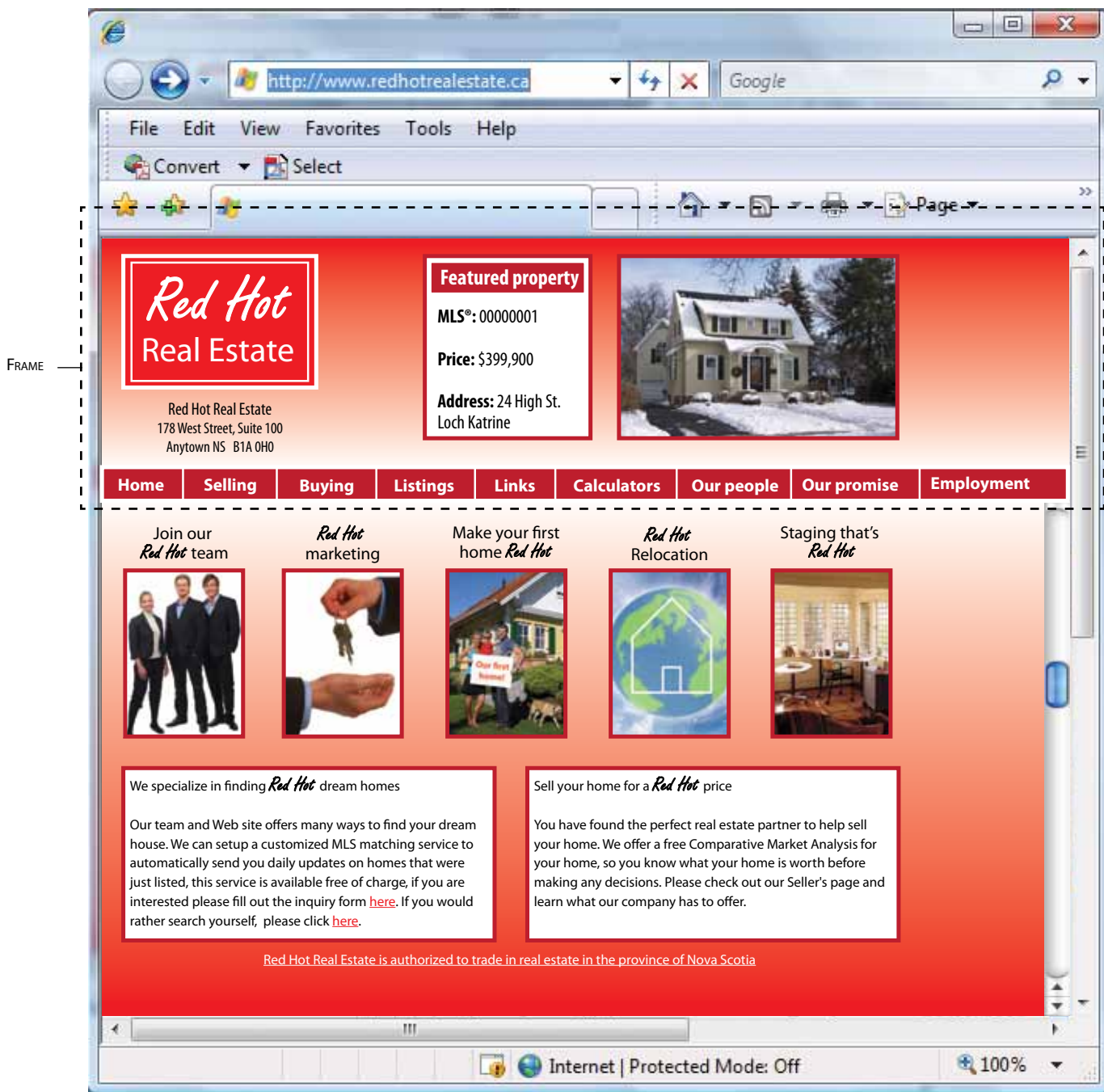
***The information contained in this e-mail and all attachments is confidential and is for the sole use of its intended recipient. If you are not the intended recipient, please note that it is strictly forbidden to read, copy or distribute this document. If you receive this message in error, please notify the sender immediately and delete this message and all attachments from your system. Considering its mode of transmission, the integrity of this message cannot be guaranteed.***

## WEB SITES

The full brokerage name must be clearly and prominently displayed on every page (fixed or scrolling) of a brokerage Web site. The full brokerage name must also appear on every page of an Industry Member's Web site and the Industry Member's name must also be clearly displayed. In the brokerage Web site example shown right, the brokerage name is clearly identifiable and contains a territory statement.

It should be immediately apparent to anyone viewing an Industry Member's Web site who the Industry Member is, and which brokerage they work for.

One way to ensure the brokerage name is always visible on a Web page is to use framing. On a Web page, framing means that a Web site can be organized into frames. Each frame displays a different HTML document. Headers and sidebar menus do not move when the content frame is scrolled up and down. When frames are employed on an Industry Member Web site, the brokerage name can be displayed in the header of a page and will remain visible when the viewer scrolls down the page.



## OTHER COMPONENTS

### SUPPLEMENTARY RULES FOR FRANCHISE AGREEMENTS

The franchise concept allows franchisees to take advantage of the franchiser's name, structure, advertising, and general business experience. Franchisees may be required by contract to follow set guidelines, including rules about advertising. The degree of control a franchiser has over its franchisees may vary.

It is essential for a franchisee to make sure that the requirements of the franchiser regarding advertising, if any, are consistent with the rules contained in this document, the Act, the Commission By-Law, and the Commission Policies and Procedures. The rights and obligations contained in the franchise agreement cannot contradict nor supersede these rules.

The same applies to the franchisee/sub-franchisee relationship which exists in real estate brokerage.



# CHAPTER 4

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## CONDUCT AND TRADE PRACTICES

Advertising standards are imposed by provincial legislation through the Real Estate Trading Act and Commission By-Law and by federal legislation through the Competition Act. The Competition Act contains both criminal and civil provisions aimed at preventing anti-competitive practices in the marketplace and applies not only to real estate boards and associations, but also directly to every real estate brokerage and Industry Member.

As an Industry Member, you are required to comply with the advertising standards defined in the Real Estate Trading Act, the Commission By-Law, and the Competition Act. If you fail to comply with these standards, the consequences range from fines for minor infractions, to criminal or civil charges for major violations. Ensuring your advertising complies with the standards protects you as an individual, protects the reputation of your brokerage, and protects the image of the real estate industry.

### THE COMPETITION ACT

Section 52 of the Competition Act contains provisions to address false or misleading representations and deceptive marketing practices in promoting the supply or use of a product or any business interest. All representations, in any form whatever, that are false or misleading in a material respect are subject to the Competition Act. If a representation could influence a consumer to buy or use the product or service advertised, it is material. To determine whether a representation is false or misleading, the courts consider the “general impression” it conveys, as well as its literal meaning. This means that even if there was no intention to mislead and no one was actually misled, if the general impression conveyed in the ad is misleading it can lead to civil or criminal proceedings. The advertisement can occur in any type of media and liability can extend to employees, advertising agencies and franchises.

If the literal meaning of the advertisement is clearly false, it is in violation of the Competition Act and the Real Estate Trading Act.

## FALSE OR MISLEADING ADVERTISING

Advertising plays a key role in the real estate industry because it influences the purchasing decisions of the consumer. Truthful advertising benefits the consumer and enhances the image of the industry. Conversely, misleading advertising can negatively affect consumers, Industry Members' business and the integrity of the real estate industry.

The line between “innovative” and “misleading” advertising is thin. The information provided here will clarify some of the advertising issues that the Commission is frequently asked to deal with.

### WHAT IS MISLEADING ADVERTISING?

The Commission receives many complaints about advertisements that are perceived as misleading. In determining whether or not an advertisement is false or misleading, The Commission considers both the literal meaning of the advertisement and the general impression it creates. This is the same approach as that taken by the Courts and other law-enforcement organizations. An advertisement is considered misleading when it makes a representation or claim that is false or misleading in a material respect.

An advertisement may be considered misleading even if it is not demonstrated that a consumer was actually misled. It is only necessary to show that the advertisement is capable of misleading a reasonable consumer.

### WHAT MAKES A REPRESENTATION A MISREPRESENTATION?

A claim of being “the friendliest broker in town!” is not misleading in a material respect even if the broker is usually grumpy. This is considered puffery or hyperbole—a claim that is entirely subjective and can neither be proven nor disproved. The public generally understands that such statements are exaggerations or simply matters of opinion.

“We sell every home we list in 60 days or less!” is a material representation. Its truthfulness is not affected by opinion, and it is a statement that could have a direct impact on the purchaser's choice of listing agents. Claims of this nature must be able to be proven with accurate documentation.

### WHAT CAN CAUSE MISLEADING ADVERTISING?

#### 1. Negligence

If an Industry Member provides incorrect information by mistake (for example, punches the wrong number into the calculator when determining square footage), the Industry Member has made a negligent misrepresentation. Industry Members must be diligent, when creating advertisements, to proofread all representations before the advertisement is published.

## 2. Incompetence

Consider the Industry Member who very carefully measures square footage, but gets it wrong because he doesn't know how to calculate the square footage of irregular properties. Although the information provided is incorrect, and thus is a misrepresentation, the issue of the Industry Member's competence may also be addressed under the Real Estate Trading Act. A pattern of negligent misrepresentations by an Industry Member may demonstrate incompetence. Incompetence is conduct deserving of sanction under the Real Estate Trading Act.

## 3. Recklessness

A misleading claim may be the result of failing to follow proper procedures. For example, when determining square footage of a property, an Industry Member may choose to obtain the information from a previous listing rather than to actually measure the property. This behaviour is reckless and in breach of the Rules. Occasionally, unverified information must be used. In these cases, the Industry Member should make that fact clear to the consumer. For example, "Seller states that insulation was upgraded to R20. Brokerage could not verify."

## 4. Intentional Misrepresentation:

Intentional misrepresentation is an intentional untrue statement. Examples are:

- A misrepresentation deliberately made with the intention of enticing a party to act, for example, an Industry Member attempts to justify a commission rate by stating that commissions are fixed by the Real Estate Commission.
- The deliberate withholding of information that is known to be relevant to the transaction, for example, an Industry Member knows of or suspects a latent defect in a property and chooses not to disclose this information to a potential buyer.

This type of misrepresentation is very serious. Industry Members found guilty of intentional misrepresentation are subject to significant sanctions.

## SOME RESTRICTIONS APPLY

When space or time is limited, it is difficult to know how much information to include in an advertisement. Sometimes, a simple reference to "terms and conditions" eliminates the need for a long description and increases the appeal of the ad. The rule to follow in determining whether terms and conditions need to be spelled out in the advertisement is as follows.

Conditions (or terms or restrictions) need not be described if:

- a) it is disclosed that there are conditions;
- b) the conditions are reasonable and likely to be anticipated by the consumer; and
- c) the conditions do not substantially alter the offer or program being advertised.

Examples of “reasonable” conditions that would likely be anticipated by the consumer are “offer not open to existing listings” or “offer applies only to residential listings”. If terms, conditions or restrictions substantially alter the advertisement, they must be disclosed in a clear and conspicuous manner. Consider the following example:



**Assisted Sales Ltd.**



**Moving? Need cash?**  
Our brokerage promises to pay you \$1,000 if your property does not sell within 90 days. \*

**555-5555**  
assistedsalesltd.ca

**John Doe** \*Terms and Conditions apply

The impression created by this statement is that the consumer will receive \$1,000 cash if the property does not sell within 90 days. However, the “terms and conditions” are that: 1) the property must eventually be sold through the brokerage; and 2) the \$1,000 will be in the form of a discount from the commission.

The actual offer is substantially different from what appears to be offered. This misleading advertisement can easily be clarified to reflect the true nature of the program:



**Assisted Sales Ltd.**



**Moving? Need cash?**  
Our brokerage will reduce your commission by \$1000 if we don't sell your home within 90 days.

**555-5555**  
assistedsalesltd.ca

**John Doe**

**ATTENTION:** In cases where the advertisement is misleading because the undisclosed terms or conditions substantially alter the advertisement and there is sufficient space to describe the terms or conditions, it may be considered as an aggravating factor. It is recommended that Industry Members use descriptions such as “Terms and Conditions Apply” only if space limitations are legitimate.

### INDUSTRY TERMS USED IN ADVERTISING

What is clear to Industry Members may be confusing to the public. For example, claims regarding the “listing commission” or the “selling commission” may unintentionally mislead the public. The consumer often does not realize that each of these terms refers to only a portion of the total commission payable. When using industry-specific terms in advertising, Industry Members must present the information in such a way that the general public will have a clear understanding of what the advertisement means.

### STATEMENTS THAT MAY CREATE CONFUSION REGARDING NAME, TRADEMARK, SLOGAN OR LOGO

The By-Law prohibits the use of wording that can create confusion, including a name, a trademark, a slogan or a logo in any advertising, soliciting or representations. For example, the public should not confuse a broker or a salesperson with another because the advertisement didn't clearly distinguish between two similar identities.

### WEB ADDRESSES

The domain name or e-mail address for a real estate brokerage or an Industry Member must have a logical connection with the name under which he or she operates and be distinct from the domain names and e-mail addresses of other brokerages and Industry Members.

**ATTENTION: A Web site address, even if it contains the complete name of the brokerage (www.xyzatlantic.ca for XYZ Atlantic), is not sufficient for brokerage identification. Industry Members must supply the complete brokerage name in an advertisement apart and separate from a brokerage name contained in a Web site address.**

## VERIFIABLE AND QUANTIFIABLE IDENTIFICATION STATEMENT

The By-Law states that, for the purpose of identification, an Industry Member can include any verifiable and quantifiable statement that does not violate any other rules in the Act or By-Law. For the purpose of identification means a statement used by an Industry Member that allows the public to recognize him or her by their individual characteristics or identify them as a salesperson or a broker.

For such a statement to be considered “verifiable and quantifiable”, it must provide enough information to prevent the public from being deceived or misled. In other words, a verifiable and quantifiable identification statement in any advertising, soliciting of clients or representations must:

- provide enough information so that a member of the public cannot attribute more than one meaning to the message
- upon request from any person, be justifiable by the Industry Member using factual and solid proof

Advertising that contains verifiable and objective facts usually meet these criteria.

## PROFESSIONAL AFFILIATIONS

Any association, board, or network, such as CREA or NSAR, to which the Industry Member is currently affiliated may be mentioned. Industry Members cannot use any affiliations that are not current. For example, an Industry Member who wants to use the F.R.I. designation, must meet all membership criteria for this designation, including payment of any related fees.

## PROFESSIONAL DESIGNATIONS

Any Industry Member who holds a professional designation, such as an engineer or lawyer, may mention it as long as he or she is a member in good standing and is listed on the organization's membership directory.

## EDUCATION AND OTHER TRAINING

If an Industry Member has a college or university degree, they may include it. Other types of recognized training can also be advertised, including training in arbitration or home staging, or the number of continuing professional education (CPE) credits issued by an organization such as NSAR.

## CORPORATE CLUBS

A number of brokerages and brokerage franchisers have internal prizes and competitions through which high achievers receive honorific titles. These include designations like "Chairman's Club", "100% Club", "President's Gold Award", "Executive Club", "Million Dollar Club", "Top Producer Award", and so on. In addition to being numerous, the rules for granting these designations vary greatly from one brokerage to the next.

Consequently, the use of these titles in advertising is permitted only if the award criteria is available upon request and the location of this information is mentioned. Without these details, these corporate designations are not verifiable and quantifiable statements and cannot be used. In every case, you must indicate the year the designation was received.

**"100% Club – 2006":** The average consumer can reasonably have a doubt about the meaning of this expression. For example, "100%" could mean that an Industry Member successfully concluded 100 per cent of the listings they took in a given period (which period is not indicated). It

could also be interpreted as a guarantee of satisfaction, that is to say “100% of clients were satisfied with this Industry Member’s services”. To be acceptable, the criteria for membership in this club must be spelled out in the ad, otherwise it cannot be used.

**“Executive Club – 2005”:** The lack of details can create confusion in the consumer’s mind. Are members of the “Executive Club” among the company’s decision makers? Do they have special skills that warrant the addition of this designation? To be acceptable, the ad must specify where to find the criteria for membership in this club.

## SPECIALIST DESIGNATIONS AND AREAS OF PRACTICE

You cannot be granted the title of “specialist” by a real estate organization, such as NSAR or CREA, because they do not bestow “specialist” titles or designations. Therefore, any title or phrase suggesting an Industry Member holds the title of specialist in a given area of real estate is prohibited. Also prohibited is the use of the expressions “specializing in”, “specialized in”, “specialist in” or “specialties”. However, an Industry Member may advertise his or her preferred field(s) of practice, for example the terms “commercial real estate brokerage” or “residential brokerage” are acceptable.

## COMPARATIVE ADVERTISING

Comparative advertisements can be very beneficial to the marketplace. In the view of the Competition Bureau, “the increased use of direct comparisons is a positive development...enabling potential purchasers to make more intelligent decisions.” In other words, ads that compare facts and figures in a straightforward way make it easier for consumers to decide who they want to deal with.

Consider the following examples:

*“Our client saved \$3000 in commissions.”*

Without additional information to clarify it, this is meaningless and may be a misleading comparison, regardless of whether it is an accurate statement. It leaves consumers with the impression that they would pay \$3,000 more at other agencies. What is the initial commission rate upon which the advertised saving was based? Are there differences in the type or level of service provided? The fact that an initial commission rate is not mentioned may also imply that there is a fixed commission rate throughout the industry. This advertisement can be made more useful and truthful by a simple clarification, for example: *“Our client saved \$3000 based on a 6% commission rate. Rates vary—there is no fixed commission rate.”*

Another example of an unacceptable comparison ad is:

*“Our agency sells more houses than anyone else.”*

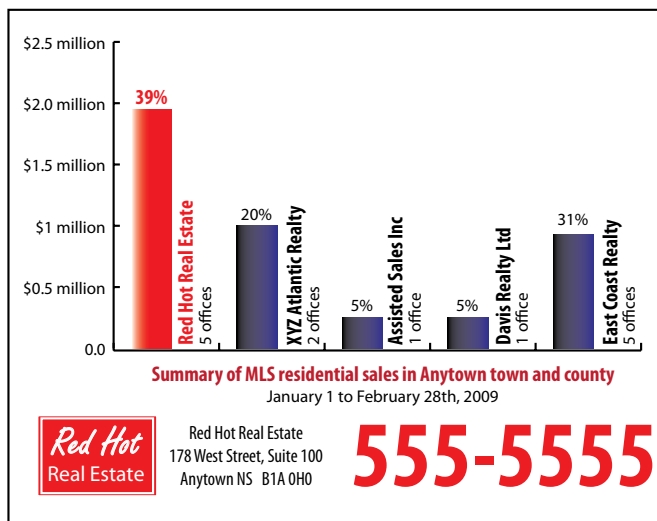
This is a meaningless comparison because it does not specify where or in what market the agency sells more houses. It may also be misleading. Consumers would reasonably assume that the information applies locally. If this claim refers to Truro statistics, but the advertisement is circulated in Dartmouth, the Dartmouth consumers are likely to

be misled. The claim would also be misleading if it were based on MLS figures and an Industry Member outside the MLS system sells even more houses. A simple modification would correct both these problems, for example: “We sell more houses through MLS than anyone else in Truro.”

“XYZ Atlantic Realty’s rate is 8%, ours is 6%. Who are you going to choose?”

Although the statements made in this advertisement may be accurate, Industry Members who make this sort of claim often run into difficulty because they are unable to support it. If a complaint were filed about this particular ad and there was sufficient evidence to indicate that it might be misleading, it would not be up to XYZ Atlantic Realty to prove that their rate isn’t eight per cent. It would be up to the Industry Member placing the ad to prove that it is.

In addition to statements, Industry Members may use graphs to illustrate a comparative advertisement. For example the following ad compare facts and figures in a straightforward way:



This ad clearly indicates what is being compared and the consumer can appreciate the performances illustrated. The ad indicates that sales volumes are being compared, expressed as dollars and as percentages and illustrated using a graph. This graph is proportionate to the sales volume. The ad specifies the period covered by the comparison and the territory concerned.

The following ad concerns the same objective facts as the previous one, but is not acceptable: This example appears to refer to objective facts, that is to say sales volumes of various brokerages. However, these facts would be difficult to verify since there is no reference to the period covered. The consumer has no way of knowing if the ad contains figures for the last month or the last five years. In addition, this ad creates confusion because it might suggest that individual offices are being compared, as illustrated in the previous example, this is not the case. And finally, the source of the information is not indicated.





The bottom line is: don't make any claims that you can't substantiate. To avoid an unprofessional industry image, any advertisement that makes a comparison to a competitor should be clear, truthful and in good taste. For further information on comparative advertising, refer to the Competition Bureau of Industry Canada's Web site.

## NUMBER OF YEARS OF EXPERIENCE

You can indicate your years of experience working in real estate, however, in addition to being true and provable, the number of years includes only those years of experience acquired as a broker and/or salesperson. A person who has been a real estate salesperson for 10 years and spent 15 years before that as a leasing manager or property developer cannot claim "25 years of experience".

**20 years of experience:** This person has 20 years experience as a salesperson. This statement, in context, has only one meaning and would be easy to prove. If indeed these facts are true, this statement is allowed.

## COMBINED YEARS OF EXPERIENCE

You cannot advertise combined years experience—the total number of years of experience for a group. Experience can only be indicated for an individual because combined experience is a meaningless concept. For example, the following three selling teams each have 46 combined years of experience.

- Selling team X is comprised of two salespeople, each licensed for 23 years.
- Selling team Y is comprised of six salespeople, with no person licensed for more than eight years.
- Selling team Y is comprised of three salespeople, one with 45 years experience and two who just received their licences.

While each team legitimately can claim 46 years combined experience, the teams are vastly different in terms of size, experience, and skills.

**Assisted Sales Ltd.**

Licensed 1 year —  Put our 32 years combined experience in the real estate industry to work for you!  Licensed 31 years

**John Doe** **555-5555** **John Smith**  
assistedsalesltd.ca

## RECRUITMENT ADVERTISING

Recruitment is an ongoing effort for most brokerages. When recruiting, there are specific rules about what brokers are and are not allowed to advertise.

## EARNING POTENTIAL

In light of the surveys which have been conducted reporting the actual earnings of the average salesperson in the business, and the fact that, as with any commission sales position, actual earnings vary widely. Any advertisement that suggests a certain level of income can be misleading to a member of the public who might be considering

Free local classifieds  **Search** All Ads ▾

[Halifax](#) > [Jobs](#) > [Sales](#)

**Make \$100,000+ a year!**

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**Address:** 8 North Street  
Anytown, NS  
**Date listed:** 22-April-09

**Do you want to make over \$100k per year with unlimited earning potential?**

Look no further than Costal Realty Inc.

We provide full in-house training for licensed salespeople. Call to set up an interview today or visit <http://www.oneborneveryminute.ca> for more information.

**Contact poster by email**  
Your Email   
Message

Verification code  Enter code



**Send**

[View poster's other ads](#) | [Watch this Ad](#) | [Print Ad](#) | [Email this Ad to friends](#)

real estate as a career. Such a person might even be prompted to give up a presently well-paying job on the basis of an unrealistic salary goal that many applicants could not hope to reach.

## MANAGEMENT OPPORTUNITIES

If you are seeking a manager or a person with management potential, the above reference is acceptable. However, if there is no likelihood of a vacancy in a management position in your brokerage in the near future you cannot advertise management opportunities.

## EDUCATION AND TRAINING

Some brokers offer training courses when advertising for personnel. This, of course, is permitted, however, such advertising should not be done unless you are making or prepared to make adequate training courses available to recruits.

Some brokers offer to pay the costs associated with taking the salesperson licensing course in exchange for signing with their brokerage. This is permitted, however, before signing a contract the broker must clearly inform candidates in writing of any requirement to pay back educational costs and any other fees if the person leaves the brokerage within a certain time period.



# CHAPTER 5

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## ADVERTISING AND THE BROKERAGE

### BASIC RULES

Real estate advertising typically falls into one of two main categories. The first category includes advertising the services offered by the Industry Member. The purpose is to draw the attention of potential clients to these services and not to a specific property for sale or lease. Examples of this type of advertising are those television or radio ads extolling the merits of an Industry Member or a brokerage.

The second category concerns brokerage transactions and includes advertising real estate. This type of advertising is done in newspapers and trade publications, on specialized television networks (The Real Estate Network), on listing-cut sheets, and on the Web. The purpose is to advertise one or more properties for sale or lease.

To advertise brokerage transactions, the By-Law requires brokers and salespeople to have the seller's or lessor's written permission to advertise the property. In practice, this means that an Industry Member can advertise a property for sale or lease only if they have a brokerage contract authorizing them to do so.

Caution must be used when a listing brokerage authorizes another brokerage or salesperson to advertise a property. If you want to advertise another brokerage's listing, you must obtain the permission of the owner and the listing broker, and the listing brokerage name must be clearly displayed in the advertisement. Every Industry Member must ensure that their own listings are clearly defined and any listings on their Web site that do not belong to them are clearly identified as such.

One way to ensure whose listings are whose is to create two links for listings, one titled "My Listings" and one titled "Other listings" with each link taking you to a separate and correspondingly titled Web page.

### USING ANOTHER INDUSTRY MEMBER'S LISTING-CUT SHEETS

If you want to print another Industry Member's listing-cut sheet from MLS® to give to a potential buyer, you cannot remove the name of the listing brokerage or salesperson from the sheet. The same holds true for Industry Members who advertise properties listed by other Industry Members on their Web sites.

The listing-cut sheets available to the public must always contain the name of the listing brokerage, according to these minimum standards:

- the listing brokerage name must appear on the listing-cut sheet and, for listing-cut sheets on Web pages, it must be visible without having to scroll down the page
- the listing brokerage name must be reproduced as it appears on the sheet from which the listing information was taken
- the listing brokerage name must appear in a font that is the same colour and at least the same size as the rest of the information contained on the detailed description sheet;
- the listing brokerage name must appear when the description sheet is printed out

In addition, an Industry Member authorized by another listing brokerage to advertise properties for sale by the other brokerage must clearly indicate in their ad that it is not their listings.

## IN THE ABSENCE OF A BROKERAGE CONTRACT

You can advertise a property for sale or for lease only after you have written authorization from the seller or lessor. A verbal agreement is not acceptable.

## ADVERTISING AFTER A BROKERAGE CONTRACT EXPIRES

You cannot advertise a property without a contract, you also cannot advertise a property after a contract expires or terminates. Termination includes cancelled contracts and completed transactions.

This means, among other things, that you must:

- Immediately remove the listing from the MLS® and from any Web site advertising this property through the brokerage.
- Remove any signs advertising the property.
- Stop advertising in all other forms of media, including radio, television, newspapers, periodicals and specialized publications.

Most media sources that publish or broadcast real estate advertising require orders to be placed in advance, sometimes with a deadline several days or even weeks before actual publication.

There are situations where an Industry Member has a contract at the time the order is placed, but the contract is due to expire before the advertising campaign ends. In some cases, the listing expires and is given to a different brokerage.

The following example illustrates this problem:

1. Jane Smith of XYZ Atlantic lists Bill MacDonald's property on March 1, 2009 for a period of three months. The contract expires on May 1, 2009.
2. Jane wants to advertise the property in a real estate magazine immediately, but the deadline for the March issue has already passed. However, she immediately reserves ad space in the April and May issues.
3. Confident that her client will renew the brokerage contract and wanting to avoid a repeat of what happened in March, on May 15, the deadline for the June issue, Jane reserves space to continue advertising the property.
4. Bill decides not to renew his brokerage contract and, on June 3, signs a new contract with Mary Doe of Red Hot Real Estate.
5. In the June issue of the real estate magazine, the property is advertised by XYZ Atlantic but the listing is held by Red Hot Real Estate. This irregularity is spotted and reported to the Commission.

To avoid situations like this, follow the guideline below:

- Before reserving advertising space, ensure that the contract will be in force for the entire advertising period, that is to say until publication of the next issue.
- If this means that a contract extension is required, you must obtain this extension in advance or refrain from reserving the space.

## ADVERTISING COMPLETED TRANSACTIONS

### THE SOLD NOTICE

Advertising sold properties can be a valuable marketing option for Industry Members. The most common way to advertise sold properties is to place a sold sign on the existing for-sale sign and to publish an advertisement of the property with the word "sold" written across it. The requirements for advertising vary between the listing and buying brokerages and the differences are described in the following paragraphs. However, what is common for both buyer and seller representatives is that you can only advertise a property when there is a contract in force. If you wish to advertise past the life of the contract, you must obtain a contract extension or specific written authorization; if you don't, you cannot advertise any property, sold or otherwise.

#### LISTING BROKERAGE ADVERTISING A SOLD PROPERTY

If you are the listing representative, you must obtain the seller's written permission to advertise a property as sold. This is typically contained in the Seller Brokerage Agreement. If you do not have written permission, you cannot advertise the property as sold.

### **BUYER'S BROKERAGE ADVERTISING A SOLD PROPERTY**

The buyer's representative must have the permission of the listing brokerage and the ad has to indicate their status as buyer's representative.

### **SOLD NOTICE SUMMARY**

These rules apply only once all conditions are fulfilled.

For periodicals, newspapers, and Internet:

- You can advertise a property as sold until the closing date or the brokerage contract expires, whichever comes first.
- You must ensure sure advertisements are kept up to date by indicating that the property is sold.
- You can provide only the list price. You cannot use the purchase price from the Agreement of Purchase and Sale.

For signs:

- You must remove all signage either when the contract expires or when the property closes, whichever comes first.

### **SOLD IN X DAYS**

If you want to advertise that you sold a property in a given number of days, you must count all the days between the date the Seller Brokerage Agreement is signed and the date all the conditions of the Agreement of Purchase and Sale are met.

### **PUBLICATION OF SOLD PRICE**

As long as the sale has not been published in the land registry, the price indicated in the Agreement of Purchase and Sale constitutes confidential information and you must treat it as such. If you want to publicise the selling price of a property, you must obtain written the permission of all the parties to the transaction.

The mandatory brokerage contract form gives a broker the right to advertise the fact that a property is for sale and the seller can authorize advertising the property as sold once all conditions are met.

A sale is not officially recognized until the closing date. If a sale falls prior to closing and the sold price is advertised, the seller could be at a disadvantage in negotiations with new buyers, who would already know the price that was accepted.

While the sold price cannot be made public, brokerages can record the sold price on MLS as soon as the conditions are met. The reason this is permissible is that the sold price is part of the non-public component of MLS, which is accessible to NSAR members only. Industry Members need to know a property is sold so they can immediately stop offering it to potential buyers. They also need to know the sold price to establish reliable comparables and set realistic prices for new listings. The members-only inventory of sold properties cannot be used for advertising nor be made available to the public in any medium.



**ADVERTISING THE NUMBER OF COMPLETED TRANSACTIONS**

Advertising the total number of sales completed within a given time period is common practice for brokerages. When advertising the completed transactions, you must ensure that the information advertised is verifiable (provide the source of the information), and includes enough detail not to mislead the public. You also have to specify the territory (the data must be representative of the region in which the advertising is conducted) and, if applicable, the period covered.

Typically, this type of promotion uses the number of sales an Industry Member makes while acting as the sellers representative. You can also advertise number the sales in which you took part as the buyer’s representative. What you cannot do, as a salesperson, is count a transaction brokerage situation as two sales (one as the seller’s representative and one as the buyer’s representative). The same way, as a broker who employs both the seller and buyer representatives for a given transaction, you cannot count the transaction twice. Calculating the number of completed transactions this way results in artificially inflating the number of sales, which is misleading advertising.

You can advertise the total number of sales based on the date all conditions of the Agreement of Purchase and Sale are met, or based on the number of closings. You cannot use a mixture of both. Once you decide to use conditions being met as a sale, you must only use conditions being met in your advertisement. In the same way, if you use closings to count number of sales, you must only use closings advertisement. Thus an ad for a given period must never count both the sales that have closed and those for which all the conditions have been met. Also, to be consistent and project an image that is realistic over time, do not calculate transactions using one method in one ad and a different method in a subsequent ad.

In the following example, the required components are numbered and the corresponding definitions are as follows:

1. Who the ad is for.
2. Total number.
3. Territory/location.
4. Sold or transactions completed.
5. Source of the information.

**1 Jane Smith, FRI**

**2 15 homes in HRM sold 4**  
**in February 2008!\***

**XYZ Atlantic** 555-5942  
Independently owned and operated \*source: MLS **5**

**www.XYZatlantic.ca**

The following example shows all the required elements for a total-transactions advertisement.

**Jane Smith, FRI**

**15 transactions completed  
in HRM in February 2008!\***

**XYZ Atlantic** 555-5942  
Independently owned and operated \*source: MLS

**www.XYZatlantic.ca**

In the previous examples, Jane Smith participated in 15 transactions. Examples of how these transactions can be counted are:

- Seller’s representative for 10 transactions and as the buyer’s representative for five transactions.

OR

- Seven instances of transaction brokerage, three as the seller’s representative, and five as the buyer’s representative.

OR

- 15 transactions as the buyer’s representative

OR

- 15 transactions as the seller’s representative

It doesn’t matter whether the sale resulted from representing the seller or buyer or through transaction brokerage, what is important is that each transaction is counted only once.

#### ADVERTISING THE PERCENTAGE OF THE LIST PRICE

If you wish to advertise the percentage of the listing price that a number of properties sold for (generic), you do not need to obtain written permissions. If you wish to advertise the percentage of the listing price that a specific property sold for, you need to obtain the same written permissions as you do in “Publication of sold price” on page 32.

# CHAPTER 6

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## JOINT ADVERTISING

### JOINT ADVERTISING WITH NON-INDUSTRY MEMBERS

An Industry Member may not advertise, solicit clients or make representations relating to the activity of real estate brokerage jointly with a non-Industry Member. Therefore, advertising real estate brokerage services may not be combined with advertising other professional services (lawyers, accountants, chartered appraisers, building experts, and so on) or any other person in a way that suggests that these people are authorized to trade in real estate.

Nothing prevents a brokerage or group of brokerages who publish a magazine advertising their services and the properties on which they hold a brokerage contract from running ads from other professionals. Likewise, a broker or salesperson who wishes to put out a promotional folder that includes information on his own services and those of other professionals may do so as long as the broker or salesperson advertises his services separately from those of other professionals. The broker or salesperson can even have his folder sponsored by various providers of services related to his own.

### TEAM ADVERTISING

Within a brokerage office, several Industry Members may get together and form a team. Similarly, husbands and wives or parents and grown children or business partners may get together and form a team. These teams can advertise themselves as a such, there must not be any confusion between the team name and the employing brokerage. In any advertising, the brokerage name must appear clearly and predominantly over the name of the team.

If the team is spread out over more than one brokerage office, this distinction must be made clear in the advertisement.

In an ad featuring a team photo, each person must be identified by their first and last names. Use of first names only is not acceptable.

As with all types of advertising, you cannot make comparative claims without providing all the required elements for comparative claims, see “Comparative advertising” on page 23 for more information. Nor can you use combined years of experience. If you wish to use years of experience, you must include each person’s years of experience separately. For more information, see “Combined years of experience” on page 25.

The example shown right, demonstrates an advertisement for a selling team that includes all the required elements:

- the brokerage name, Red Hot Real Estate, is both clear and prominent
- the Industry Members are identified by their first and last names
- the advertisement complies with all other rules for advertising

The three ads on the next page are very similar to the ad shown right, however, each contains several mistakes.

In the first ad, the following things are wrong:

- The statement “Mary Doe Home Selling Team is #1” is meaningless. It can’t be verified or quantified.
- The statement “We’ll sell your house faster” is also meaningless. Faster than whom? Another brokerage, another selling team?
- The team photo only contains first names, which is also wrong. Industry Members must use their complete names in all advertisements.
- The brokerage name is entirely absent from the advertisement.

In the second ad, following things are wrong:

- The statement “Gold star winner for 2008” cannot be verified because the source of the information is not supplied. As well, the meaning of “Gold star” is not explained.
- The statement “Top selling team in HRM in 2007” cannot be verified because no source is given. However, if the source were given, and the information could be verified, this statement would be acceptable.

In the third ad, following things are wrong:

- The selling team name is huge and the brokerage name is so small it is barely legible. The brokerage name must be large enough to be easily read.

Wanna team that's *Red Hot?*

Bill Hartt Bob Hartt

Mary Doe Carol May

Need to sell your home fast? Put the Mary Doe Home-Selling Team to work for you.

**Red Hot**  
Real Estate

555-5655  
redhotrealestate.ca

Wanna team that's *Red Hot?*

Bill Bob

Mary Carol

Mary Doe Home-Selling Team is #1!

We'll sell your house faster

**We're Red Hot**

**555-MARY**  
marydoehomes.ca

Wanna team that's *Red Hot?*

Bill Hartt Bob Hartt

Mary Doe Carol May

Gold star winner for 2008!

Top selling team in HRM in 2007

**Red Hot Real Estate**

**555-5655**  
redhotrealestate.ca

The *Mary Doe* Selling Team

Bill Hartt Bob Hartt

Mary Doe Carol May

Put the Mary Doe Selling Team to work for you!

**Red Hot Real Estate** **800-555-5655**  
www.marydoesellingteam.ca

- Because of the disparity between the size of the selling team name and the brokerage name, this advertisement runs the risk of being misleading. A person viewing the advertisement may miss the brokerage name entirely and think the selling team name is the brokerage name. When advertising a team, there can be no confusion between the team name and the brokerage name.

## JOINT ADVERTISING BY FRANCHISES

Brokerage franchises are common in real estate. In most cases, the master franchiser, a province-or nation-wide company, is rarely a real estate broker, but rather a service provider to the franchisees. Because of this, the franchiser is responsible for province-wide advertising regarding the merits of the brokerages under its banner. In franchising, it is usually the franchisees themselves who own brokerage offices. Under these circumstances, the franchiser's advertising must not lead the public to believe that there is a single brokerage covering the entire territory. For example, the following three brokerages:

- XYZ Atlantic
- XYZ Scotia
- XYZ Northern

are franchisees of the XYZ franchise. While the XYZ franchise can advertise on the franchisees' behalf, it must be clear to anyone viewing the ad that there are three franchisee brokerages, not one single XYZ brokerage.

Being able to identify and distinguish each franchised brokerage is of utmost importance in advertising. Each brokerage must be clearly and distinctly identified in accordance with the rules. In addition, there must be no confusion regarding which franchisee an Industry Member works for. Using the XYZ example, an Industry Member must specify which XYZ brokerage employs them. The following ads meet these requirements:

**Jack Smith, FRI**

**XYZ Atlantic**  
Independently owned and operated

**555-5942**



**www.XYZatlantic.ca**

**Jane Marie Doe**

**XYZ Northern**  
Independently owned and operated

**555-5753**



**www.XYZnorthern.ca**

# CHAPTER 7

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## ADVERTISING AND THE INTERNET

The exact same rules that apply to all other types of advertising, apply on the Internet, there are just a few additional points that need to be addressed and followed.

Because of the absence of any territorial boundaries on the Internet, the Commission recommends all Industry Members include the following wording on their Web sites: “\_\_\_\_\_ *is authorized to trade in real estate in the province of Nova Scotia, Canada*”.

### KEEP INFORMATION ON WEB SITES CURRENT

All Industry Members have an ethical obligation to ensure that information distributed to the public or to other Industry Members is verified in accordance with generally accepted practices, so as to guarantee its accuracy. This obligation extends to continually updating the information.

The information contained on an Industry Member’s Web site must always be up to date, whether the site is operated by the Industry Member or by a third party (for example, franchiser Web site, Multiple Listing Service®, and so on.) The public and Industry Members viewing other Industry Members Web sites must be able to rely on the accuracy of information such sites contain.

If changes need to be made to information regarding a property featured on a Web site, the Industry Member must make the changes without delay. In this regard, if a brokerage publishes listings on a site operated by a third party and has no control over the speed with which the site is updated, the broker must ensure that the operator can process change requests promptly. As an Industry Member, you cannot exempt yourself from ensuring the accuracy of the information you distribute by placing the blame on the Web site service provider you selected.

Special attention must be paid to the publication of information concerning the properties advertised by an Industry Member. This information, including any mention of a property for sale or has been sold, must be removed from the Web site as soon as the transaction is completed or upon expiration of the brokerage contract, whichever comes first.

Close attention must also be paid to the salesperson information available on a brokerage Web sites. A broker must ensure that any salespeople listed on the Web site, are currently employed by the brokerages and that their licenses are valid.

In general, Web sites often contain non-guarantee or non-liability clauses or statements. These and other similar disclaimers are prohibited on Industry Member Web sites.

An Industry Member cannot post the following types of disclaimers on a Web site:

Example of non-guarantee clause

“The information contained on this Web site is accurate to the extent that verifications would allow. It is provided as a guide only and accuracy cannot be guaranteed. Visitors to this site are urged to verify the information concerning these properties by contacting the listing salesperson.”

As mentioned previously, Industry Members have an ethical obligation to ensure that the information distributed to the public or to other Industry Members is verified in accordance with generally accepted practices so as to guarantee its accuracy. Including a non-guarantee clause, such as the previous example, is incompatible with this rule.

## **ALLOWING THIRD PARTIES TO DISPLAY ON A BROKER OR SALES- PERSON’S WEB SITE**

To increase the volume of information contained on his Web site, an Industry Member may allow non-Industry Members to display information or to advertise related services. This content may be displayed on a Web page, or several Web pages and include the contact information of lawyers, appraisers, land surveyors, and so on. This practice is permissible, provided the person viewing the site is not led to believe that these people or businesses are authorized to trade in real estate. What is not permitted is for Industry Member’s to provide recommendations or testimonials about the services of these non-Industry Members.

In addition, Industry Members cannot allow property owners who have not signed a brokerage contract to display properties they wish to sell or rent, even free of charge unless they are displayed on a completely different page clearly indicating that the properties are private-for-sale. The regulations require that all advertisements relating to a property be expressly authorized in writing.

## **HYPERLINKS**

A Web site often contains hyperlinks (links) to other Web sites. Industry Members can post links to other Web sites, but it must be clear to anyone viewing the Web site, that clicking on a link will take them to a different Web site. This is especially important if a link leads to the Web site of non-Industry Member in a related profession (like a lawyer or an appraiser), which could lead the viewer to believe that this person is authorized to trade in real estate.



If you wish to include links to other Web sites, you must obtain the Web site owners' permission to do so prior to posting the links.

When posting links to a Web site, ensure the link takes the viewer to the site's home page, not secondary pages within a Web site.

The practice of framing, displaying the content of one Web site within the pages of another Web site, is acceptable as long as the source of the information is clearly indicated. When framing content from the Web site of another Industry Member, you must have their permission and clearly state the source of the information, for example "information provided by XYZ Atlantic". This statement must appear in the upper portion of the page in a font size and colour at least equivalent to the rest of the information on the screen.

If you wish to include links to another Industry Member's online listings, (an employing brokerage Web site for example) you must make it clear to all viewing the listings that they are not your listings. These links may lead to a secondary page rather than to the home page. It is important in such cases to clearly distinguish which listings belong to which Industry Member and as well, to ensure there is no confusion over which Web site the viewer is on.

While you can provide links to Web sites of real estate-related services on your Web site, you must be clear that you are just providing the links for the convenience of viewers and not providing a reference or a recommendation and not a guarantee of the information on the Web site. The Commission strongly recommends including a statement to the effect that the Industry Member has no control over the content of the sites accessible by clicking the links. If appropriate, the statement should specify that there is no connection between the Industry Member and the owners of the other sites. Finally, it should also specify that the links do not represent an endorsement by the Industry Member of the quality or the reliability of the information, services or goods featured on these sites. The following statement fulfills the requirements:

By clicking on a link, you will be exiting the site operated by \_\_\_\_\_ . The links contained on this site do not represent an endorsement or recommendation of the persons or services thus linked. \_\_\_\_\_ has no control over the content of the sites accessed by link and cannot guarantee the quality of the information contain therein.



# CHAPTER 8

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## PROMOTIONS AND INCENTIVES

### PROMOTIONAL CONTESTS

Industry Members sometimes use promotional contests to promote their services. As with all incentives in real estate trading in Nova Scotia, publicity contests must be offered at a brokerage-wide level. That is to say, the promotion must be offered to every potential client and customer of a brokerage, not just select clients and customers of one salesperson or one selling team. If a brokerage is not willing to make an incentive available to everyone who wishes to use the services of the brokerage, then the incentive cannot be offered to anyone.

If a brokerage wishes to use a publicity contest, the broker must comply with the legislation in the Competition Act and the Criminal Code of Canada regarding publicity contests. The laws and regulations surrounding publicity contests are beyond the scope of this document. Any broker who wishes to use a publicity contest should do so only after seeking legal council.

### INCENTIVES, GIFTS, AND COMMISSION SHARING

An incentive may be in the form of a commission rebate, provided the rebate is being made to a party to the transaction. An Industry Member must not, directly or indirectly, advertise, communicate or offer an incentive to any person that is not offered at a brokerage-wide level by the brokerage with which they are licensed.

Sometimes Industry Members offer a gift to their clients in return for using their services. This gift cannot be advertised unless the gift is offered at a brokerage-wide level to all clients and customers.

### COMPENSATION REDUCTIONS AND OTHER BENEFITS

Advertisements from brokerages offering reductions in commission rates, cash rebates or other benefits and premiums to buyers and sellers doing business with them are allowed. However, they must follow certain rules to avoid confusion.

It is important to specify that the brokerage is offering the promotion, not an individual Industry Member.

A rebate to the seller or buyer constitutes a reduction in the brokerage's compensation. A brokerage that promises a reduction in commission must follow through on this commitment.

Ads concerning such promotions must follow these rules:

- The essential conditions for obtaining a rebate must appear in the ad. For example, if the offer is conditional to the client signing a brokerage contract with a minimum basic compensation, this has to be indicated.
- The ad must indicate the duration of the promotion, otherwise it will apply until such time as the brokerage publishes a notice announcing that it is terminated.
- Such a promotion must not allow a broker to pay money to someone referring clients.
- The promotion's non-essential conditions must be available and a statement to this effect must appear in the ad.
- The promotion must be offered by the brokerage to all customers and clients.

## INCENTIVES: BROKERAGE PRACTICES

Whenever a brokerage offers an incentive, the brokerage should have written policies and procedures regarding the incentive offering. The policies and procedures should be communicated to all brokerage Industry Members and applicable brokerage staff. The broker should also have a system in place to ensure to adherence to the incentive policies and procedures.

The policies and procedures should include:

- A clear description of the incentive being offered. This includes the geographical offering area, timeline of the incentive offering, and all conditions or exclusions associated with the incentive.
- The target audience of the incentive. For example, for real estate brokerages the incentive may target buyers or sellers, or persons dealing with a new branch office.
- How the incentive will be communicated. For example, the brokerage may require the incentive to be communicated in all advertisements of a certain size, flyers, Web site information and in person.
- The wording, logos or graphics to be used in advertising or communication materials.
- Documentation to be provided to the clients or potential clients that describes the incentive.

- The brokerage contact person for client complaints or concerns associated with the incentive.
- Any checklists or documents that need to be completed by the brokerage staff to ensure the incentive is offered to all clients.
- Financial or cost procedures associated with the incentive.

## PERFORMANCE GUARANTEES

A brokerage may want to offer a performance guarantee, such as a reduction in compensation if the property is not sold within 90 days.

This type of guarantee must clearly indicate what the consequence will be if the desired performance is not attained and the guarantee becomes applicable. If conditions are attached, the essential conditions must appear in any advertisement. Other conditions must be available upon request.

This guarantee must be mentioned in the brokerage contract.

**ATTENTION: if the performance guarantee is linked to an evaluation of the market value, the evaluation must reflect the reality of the market and proof must be kept in the file because this could be a source of misinterpretation and conflict of interest.**

The Commission does not recommend brokerages guarantee performance, failing which the broker will buy the property themselves at a price previously established by the broker. Again, this could place the broker in a conflict of interest situation.

If a salesperson wants to offer a guarantee, they must obtain prior authorization from their broker, because the broker is ultimately responsible for advertising and for following through on a guarantee.

## PROMOTION OFFERED BY A THIRD PARTY

Sometimes a seller may want to offer an incentive (gift, trip or other benefit) to the buyer. The seller's representative can promote the incentive with the consent of their broker. The publicity must clearly indicate that this incentive is being offered by the seller and not by the brokerage and that this promotion only applies to that particular property.

**ATTENTION: Should the seller not respect the terms of the promotion, the Industry Member, as a professional, could be held liable, both from an ethical and a legal standpoint.**



# CHAPTER 9

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## LICENCE STATUS AND ADVERTISING

### ADVERTISING WITHOUT A VALID LICENCE

What happens with advertisements following cancellation, abandonment, expiration or suspension of an Industry Member's licence?

Whether a suspension is voluntary or imposed, an Industry Member must cease all advertising. The Real Estate Trading Act states that only licensed individuals are available to trade in real estate in Nova Scotia. Advertising is considered trading in real estate and therefore, cannot be performed by any Industry Member without a valid licence.

An Industry Member who does not hold a valid licence must:

- Cease all advertising in periodicals
- Cease all soliciting of clients by mail, e-mail or phone
- Remove any advertising sign or other advertisement
- Remove all road signs
- Cease all advertising on Web sites and Internet classifieds
- Notify NSAR if a member and remove any listing on MLS or the broker must appoint a replacement
- Remove all billboards on thoroughfares and highways
- Remove all ads on company or personal vehicles
- Remove all signs on buses, public benches, in arenas or other public places

### REAL ESTATE BROKER'S RESPONSIBILITY

The broker is responsible for ensuring that the name of any salesperson in their employ without a valid licence is removed from any advertisement. The broker must follow up with the suspended salesperson to make sure all advertising is removed without delay and appoint a replacement to take over the suspended salesperson's brokerage contracts.

## LENGTH OF THE SUSPENSION

Short-term suspensions, such as a suspension for failure to complete with mandatory course requirements, can create practical difficulties when it comes to removing advertisements. However, you must demonstrate good faith by taking all possible steps with suppliers to cease their advertisements.

You must contact periodical advertisers without delay and give instructions regarding the removal of your advertisements in upcoming issues. For example, if one of your ads appears in a monthly publication and your suspension is from May 12 to June 12, which overlaps the following month, you must remove the ad for the months of May and June.

When in doubt regarding what to do or in case of difficulty with the removal of advertisements, contact the Commission.



# APPENDIX

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## ADVERTISING CHECKLISTS

### GENERAL ADVERTISING CHECKLIST

- Is the name of the brokerage shown as it is registered with the Commission?
- Is the name of the brokerage prominently displayed on every page of the Web site? Remember, at all times it must be clear that it is the brokerage advertising. The Commission encourages the use of “frames” as a solution to complying with this requirement.
- Does the phrase “Independently Owned and Operated” clearly appear with the brokerage name? (Only applicable to franchises.)
- Are you being consistent with the contact information that you provide on your Web site? If you provide a personal telephone number, have you also included a brokerage telephone number?
- Is the brokerage e-mail or office telephone number provided on your Web site answered by the brokerage and listed with the Commission as a brokerage telephone number or e-mail address?
- Are any additional telephone numbers on your Web site identified appropriately as being direct, cellular or home telephone numbers? Are any additional e-mail addresses on your Web site identified appropriately as being “direct”?
- Are you incorrectly using the term “Specialist”? The term “Specialist” is NOT permitted.

### TEAM ADVERTISING CHECKLIST

- Are all members who form your team identified by name, together with appropriate designations? Are the members of the Team identified on every page where the term Team is used? Alternatively, is the term “Team” linked to a page on your Web site that identifies the team members?
- When you advertise an award that is based on team performance, are you disclosing this fact? Have you obtained permission from the other members of the

team? (Please see the following checklist for more requirements pertaining to award advertising.)

- Is the brokerage name clearly displayed on every page or every ad?

## AWARDS AND CLAIMS ADVERTISING

- When you advertise an award, are you clearly indicating the provider (your real estate franchise or your real estate brokerage), the basis (sales volume, commission earned, etc.) and the date or period of time to which the award applies? Are you making these disclosures on the same page where the award appears? Alternatively, is the award clearly linked, using a unique identifier, to another page of your Web site that provides these disclosures?
- Are the claims made in your advertising accurate, quantifiable and verifiable?
- When you advertise claims such as “#1 Sales Representative in Anytown” or “The largest brokerage in Anytown”, are these claims verifiable and accurate? Have you substantiated these claims by indicating the source or provider of the statistics or information that relate to the claim, the type of statistics or information (sales volume or number of sales representatives) on which the claim is based, and the date or period of time to which the claims apply? Have you included these disclosures on the same page on which the claims are shown? Alternatively, are the claims clearly linked, using a unique identifier, to another page of your Web site that provides these disclosures?

## PROMOTIONS AND INCENTIVES

- Have you included the terms applicable to any promises or offers that you are making (reduced commission, guaranteed sale program, and so on)? Are these terms presented on the same page as the offers? Alternatively, are these promises or offers linked, using a unique identifier, to another page of your Web site that presents these terms?
- Are the terms of your offer(s) available in writing to any individual inquiring about the offer(s) without an obligation on that individual to provide confidential or personal information?
- Are you offering a rebate or incentive to clients? Remember that bird dogging is strictly prohibited.
- Is the incentive offered at a brokerage-wide level? Incentives can only be advertised if they are offered at a brokerage-wide level.

## TERMS AND CONDITIONS

- Are terms and conditions clearly shown on your Web site?
- Are the terms and conditions clearly connected to the content on the Web page to which they apply (for example, a unique symbol like and asterisk)?

## “FOR SALE” AND “SOLD” PROPERTIES

- Do you have permission from the applicable party (seller, buyer, their representative) to advertise a property, including its address, picture(s), location and/or transaction details? See ““For Sale” and “Sold” Properties” on page 51 and “Advertising and the Brokerage” on page 29 for more information.

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