

INTERNET BEST PRACTICES GUIDE



Introduction

Over the years the use of the internet has increased dramatically and is ever changing therefore The Manitoba Securities Commission (the “Commission”) and The Manitoba Real Estate Association (the “Association”) are providing the revised guidelines for real estate practitioners.

The Commission is a member of the Association of Real Estate License Law Officials (“ARELLO”) which represents real estate regulatory agencies internationally. ARELLO recently updated its Internet Best Practices Guidelines and are now provided to the industry.

Definitions

In these guidelines, the term:

“Active communication” means the intent of contacting specifically identifiable individuals or groups of individuals.

“Active solicitation” means active communication with consumers about real estate services with intent to form a brokerage relationship.

“Advertising” means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to the public for any purpose related to a licensed real estate activity.

“Jurisdictional intent” means a reasonable body of evidence, which points to intentional activity on the part of a legal entity or individual to perform services or offering to perform services requiring a real estate license in a jurisdiction.

“Licensed brokerage disclosure” means advertising or messaging that contains the following information:

- (a) the brokerage’s name or trade name as licensed within a jurisdiction;
- (b) address of the brokerage’s business office; and
- (c) the other jurisdictions (e.g. countries, provinces or states) in which the brokerage holds a real estate brokerage license

“Licensed entity” refers to both licensees and licensed brokerages.

“Licensee” means a broker, authorized official and salesperson.

“Licensee disclosure” means advertising or messaging that contains the following information:

- (a) the licensee’s name as registered under the Act,
- (b) the name of the brokerage with which the licensee is registered,
- (c) the address where which the licensee’s office is located, and
- (d) the other jurisdictions (e.g. countries, provinces or states) in which the licensee holds a real estate license.

“Messaging” means all forms of communication in any manner and by any means of communication to the public for any purpose, other than advertising, related to licensed real estate activity.

“Passive Communication” means communication available to the general public with no intent to contact specifically identifiable individuals or groups of individuals.

Across Jurisdictional Lines

Jurisdictional Intent

Since the Internet is cross-jurisdictional in nature, the question of what constitutes online licensable activity from a jurisdictional standpoint must be considered. The determination of this issue is based on the concept of “*jurisdictional intent*.”

Jurisdictional intent may occur when an individual or company uses the Internet to solicit relocation customers in the hopes of referring them to licensed entities, for a fee, in other jurisdictions. Jurisdictional intent likely exists in cases where multiple websites are used to attract consumers moving to many different parts of the country, which is distinct from the casual referral fee common in the industry when a consumer (whether a visitor to a licensed entity’s website or not) contacts a licensed entity for a recommendation as to which broker they should use when moving to another area.

Licensing Requirements

Any online activity meeting the test of jurisdictional intent is subject to the laws governing trading in real estate in a specific jurisdiction. An appropriate license is required for each jurisdiction in which licensable online activity meets the test of jurisdictional intent.

Licensee and Licensed Brokerage Online Disclosure

Licensed entities can use the Internet in multiple ways to contact consumers about real estate services and to advertise. The ways in which this is done will continually evolve. “Licensee” and “licensed brokerage” disclosure will help to ensure that online consumers know when they are dealing with a licensed entity, who they are, and where their primary business office is located.

NOTE: for the rest of this section the term “full disclosure” refers to licensee and licensed brokerage disclosure.

Regulatory Intent of Online Disclosure Guidelines

All Internet related advertising that consumers can view or experience as a separate unit (for example, email messages or Web pages) requires full disclosure. At some point during an exchange of direct online messages (of any nature) between consumers and a licensed entity, the licensed entity should make full disclosure in some written form that is understandable and easily available to the recipient prior to providing, or offering to provide, licensable services. The burden of proof of such prior full disclosures falls on the licensed entity when addressing a consumer complaint.

Online Disclosure Guidelines

The Web: Whenever a licensed entity owns a Web page or controls its content, every viewable page should include (or link to) full disclosure. A “viewable page” is one that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

E-mail, Newsgroups, Discussion Lists, Bulletin Boards: These formats require full disclosure at the beginning or end of each message.

Instant Messages: Full disclosure is not required in this format if the licensed entity provided the written full disclosures via another format or medium (e.g., e-mail or letter) prior to providing, or offering to provide, licensable services.

Chat: Full disclosure is required prior to providing, or offering to provide, licensable services during the chat session or in text visible on the same Web page that contains the chat session, if the licensed entity controls the website hosting the chat session.

VON (Voice Over Net):

- Advertising – “audible” full disclosure is required prior to the advertising message or disclosure text visible on the same Web page that contains the VON session (if applicable).
- Messaging – “audible” full disclosure is not required if full written disclosure was provided via another medium (i.e. e-mail, letter) prior to providing, or offering to provide, licensable services.

Multimedia Advertising (e.g. Web based, executable e-mail attachments, etc.): Full disclosure should be visible as part of the advertising message.

Banner Ads: Should link to a Web page that has full disclosure, unless the full disclosure is in the banner.

Active Solicitation

Licensed entities can contact consumers about real estate services in multiple ways on the Internet, any of which could reasonably be considered “active solicitation.”

Regulatory “Intent” of Online Active Solicitation Guidelines

Active solicitation occurs whenever a licensed entity establishes active online communication with a consumer about real estate services with the intent to form a brokerage relationship. Active online communication methods include e-mail, chat, VON, instant messaging, and any other form of contact with specifically identifiable individuals or groups of individuals. Other forms of online communications (such as Web pages, discussion lists, bulletin board, banner ads, and multimedia advertising) are usually not considered “active solicitation” because they are forms of “passive” communication.

Online Active Solicitation Guidelines

The provisions of the rules and regulations of a jurisdiction that relate to provision of information, marketing, advertising and communicating with customers and clients continue to apply to any licensed entity engaged in “active solicitation” using the Internet or at any time a licensee establishes active online communication with consumers about real estate services with intent to form a brokerage relationship.

Online Listing Information

Regulatory “Intent” of Guidelines for Listings Advertised Online

The primary issues with online listing information relate to “currency” of online information (i.e. keeping all online sources of the same listing information current and consistent), and advertising of other licensed entity’s listing information.

The public should be able to assume that the information provided in the online listing is current, consistent and accurate. This principle applies to all forms of advertising or marketing media. For example, online listing information should be consistent with the property description and actual status of the listing. Material changes to the listing status or property description should be updated in a timely manner.

Written permission should be obtained, from other licensed entities, before displaying or altering their online listing information.. Licensed entities should avoid using online means of displaying listing information that are not directly controlled by them.

Guidelines for Listings Advertised Online

Online listing information should be consistent with the property description and actual status of the listing. When a licensed entity controls the website, material changes to the listing status authorized by seller or property description should be updated in a timely manner.

When a third party controls the website (e.g. mls.ca or Homeadvisor.com), licensed entities to whom the listing belongs should submit written requests (e.g. e-mail, online forms, or fax) for updates reflecting material changes to the listing status or property description in a timely manner.

All listing information should indicate in a readily visible manner the date that the information was last updated.

Licensed entities should not advertise other licensed entities' listings without written permission and, if given, should not alter the online display or any informational part of the listing without written permission of the listing owner.

Advertising and the Internet

As a general principle, licensees should be aware that all regulations and policies respecting advertising apply equally to the Internet. This includes websites, e-mail, and any other potential online identification, representation, promotion or solicitation to the public which is related to licensed real estate activity.

The name of the brokerage must appear on all advertisements with the public in the course of trading in real estate. This applies to the electronic advertisements carried out by a broker, associate broker or associate. This includes each individual page and/or frame of a website, e-mail messages, e-mail discussion groups, bulletin boards, etc.

Due to the global nature of Internet advertising, adequate contact information with respect to the brokerage should also be included; e.g. the telephone number including area code. Where the brokerage has a company home page and/or e-mail address, the links to these should also be included.

The Internet poses additional potential problem areas that require caution on the part of licensees, both individuals and their employing agents.

Unauthorized Use of Domain Names (URL's), E-mail Addresses and Meta Tags

A domain name is the Internet address of a website. For example, the ARELLO domain name is www.arello.com. Meta tags are keywords embedded in a website that help Internet search engines find that website. For example, a licensee might include keywords such as "real estate," "homes," "houses," etc. in their website's meta tags field. When a person enters the word "homes" in the search function of Internet search engines such as Google or Yahoo etc., websites that contain the word "homes" in their meta tags field will be found. Domain names, e-mail addresses and meta tags should not contain any trademark that the licensee has not been authorized to use. Examples would be the unauthorized use of the terms MLS®, Multiple Listing Service® and REALTOR. References to the names of other brokerages or licensees should also not be included under meta tags without their written permission.

Currency and Accuracy of Information

Listing information must be kept current and accurate. Licensees must ensure that when listings have expired, they are immediately removed from websites. Similarly, if property information changes during a listing period, the information posted on websites should be changed accordingly.

Licensees should not advertise other licensee's listings directly on their own website without permission from the listing associate, and if this permission is given, should not alter any of the listing information without approval of the listing associate. If linking to an outside database of available properties, it should be clear to consumers which listings are the licensee's, and which are not. The name of the listing brokerage cannot be removed.

Associates must ensure that licensing information posted on their website is kept current and accurate. There should be no reference to any licensee who is not currently licensed with that brokerage. Where information about unlicensed employees of the associate is included, the fact they are not licensed should be clear.

Those who provide general market information on their websites should include a notation such as "General market information on this website was last updated on ____."

Links, Deep Links and Frames

A link is either a graphic or word(s) in a website that, when clicked on, takes an Internet user to the first page (also known as the "home page") of another website. A deep link is a link that takes a user to a page other than the home page (known as an "interior page") of another website. A frame is created when one website captures the content of another website. The second website is said to be "framed" if it appears to be a part of, or embedded in, the first site. This is often done in an attempt by the first site to not "lose" the user to the second site.

There are a number of issues relating to linking and framing:

- Licensees should seek permission prior to linking to another website. While it is generally agreed that permission is not required to link to certain websites such as government agencies, public libraries etc., licensees must remember that a website and its contents are intellectual property. The "look and feel" of a website, its original content, and the manner in which the information is compiled all give rise to a copyright.
- Regardless of whether a real estate board, association, or private company own those rights, licensees should adhere to the guidelines established for linking to that listing information.
- Deep linking should never be done without seeking prior approval of the website owner. Many websites earn advertising revenue based on the number of visits to the home page of the site. By deep linking to an interior page of a website, advertising revenue is potentially lost.
- Framing another website should never be done without seeking prior approval of the website owner. Framing can lead to copyright and/or trademark infringement. In effect, when another website is framed, that property is being used.
- Licensees should avoid misrepresenting the relationship between their services and the services offered by a site to which their site is linked. If the link creates the impression that the licensee is participating in, or endorsing the services being offered, that licensee may be assuming responsibility for the performance of those services.
- Linking is better done with text than with graphics. Graphics are often subject to copyright or trademark and can't be used without the permission of their owner
- Licensees should make certain that any site to which they link is compatible with the image and views they wish to portray.

License Jurisdiction

Licensees must not give the impression that they are licensed in a jurisdiction where they are not. Licensees should clearly indicate on their website where they are licensed.

Office Policies Regarding Internet Use

As with other forms of advertising, brokers need to be aware of the content of their licensees' websites. A prudent broker should approve all websites before they are activated and maintain regular website monitoring to ensure ongoing compliance with the jurisdiction's advertising guidelines and any additional policies the company may have.

It is recommended that companies establish e-mail/Internet workplace policies that include usage guidelines, penalties for violations, and mechanisms for addressing complaints. Brokerage and licensee websites should also contain a privacy policy statement that informs Internet users of the company's or licensee's intended use of any personal information gathered.

Social Networking

In recent years social networking, such as blogs, Facebook, Twitter, etc. have become common forms of communication. Licensees sometimes use this form of networking to communicate with clients, customers and the public in general. Should the purpose of the communications carried out through any of these networks be of a nature that they fall under the regulation of trading in real estate, then the same requirements of full disclosure must be carried out as in any other medium. Brokers should be aware of the mediums their sales force are using to communicate with the public.

For example, the homepage for a blog would have to identify the licensed individual and the brokerage. The same would be true of the homepage of a Facebook account. In the case of a medium like Twitter, it would not be reasonable that every "tweet" contain the disclosure information, but the homepage that a person must register with in able to receive messages from the sender, must contain the name and brokerage of the sender.

This is similar to a licensee giving a person their business card, which contains the required information. The licensee does not disclose this information again every time they have contact with that customer or client.

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