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INTRODUCTION

-Review of the Advertising Regulations began in April 2009

PURPOSE

The purpose of the Regulations is to bring the existing regulations into line with current situations and technology.

OVERRIDING THEMES

- Honesty and Clarity and
- Transparency (consumers know who they are dealing with)

APPROVAL and EFFECTIVENESS

-On April 24, 2013, the New York State Board of Real Estate approved an amendment to the Advertising Regulations

-The Regulations will take effect on January 2, 2014 and will apply to all real estate brokers, associate real estate brokers and real estate salespersons

CURRENT REGULATIONS

19 NYCRR 175.25

Advertisements:

(a) All advertisements placed by a broker must indicate that the advertiser is a broker or give the name of the broker and his telephone number.

(b) All advertisements placed by a broker which state that property is in the vicinity of a geographical area or territorial subdivision must include as part of such advertisement the name of the geographical area or territorial subdivision in which such property is actually located.

REPLACED WITH NEW REGULATION (please contact me for a copy)

1. WHO CAN ADVERTISE?

OWNERS CONSENT

-19 NYCRR Section 175.10 - “A real estate broker shall never offer a property for sale or lease without the authorization of the owner”

-No property can be advertised unless the real estate broker has obtained the property owner’s consent. See 19 NYCRR Section 175.25(b)(2)(a).

ONLY THE BROKER CAN ADVERTISE

-Only a real estate broker is permitted to place or cause to be published advertisements related to the sale or lease of property. See 19 NYCRR Section 175.25(b)(1).

-Advertisements placed by an associate real estate broker, real estate salesperson, or a team are not permitted unless:

(i) the advertisement is approved by the real estate broker with whom the licensee is associated and

(ii) the property advertised is listed with or represented by a real estate broker with whom the licensee is associated. See 19 NYCRR Section 175.25(b)(1).

OTHER FIRMS LISTINGS / NO LISTINGS

-Absent the consent of the listing broker, a real estate broker cannot advertise any property which is subject to an exclusive listing held by another real estate broker. See 19 NYCRR Section 175.25(b)(2)(b).

-Advertisements Referencing Property Not Listed with the Broker

Any advertisement that references or includes information about a property that is not listed with the advertising broker or was not sold by the advertising broker must prominently display the following disclaimer: **“This advertisement does not suggest that the broker has a listing in this property or properties or that any property is currently available.”** Such advertisement: (i) shall not suggest, directly or indirectly, that the advertising broker was involved in the transaction and (ii) shall not refer to property currently listed with another broker absent the consent provided pursuant to subdivision (b)(2)(b) of the Regulations. See 19 NYCRR Section 175.25(d)(6).

Examples:

“I specialize in representing buyers and sellers in Battery Park City” or “Contact the Top Producer at The Greens” or an advertisement in StreetEasy (“zipcode purchase”)

1. WHO CAN ADVERTISE? (CONTINUED)

TEAMS

Definition of Team

-A “team” is defined as two or more persons who are associated with the same real estate brokerage and who hold themselves out or operate as a team. See 19 NYCRR Section 175.25(a)(2).

-One of the team members must be an associate real estate broker or a real estate salesperson. See 19 NYCRR Section 175.25(a)(2).

Name of Team

-The team name must include the term “team.” Additionally, the use of a term other than “team,” such as “associates,” “realty” or “group” is prohibited. The names of unlicensed individuals may not be used in a team name. See 19 NYCRR Section 175.25(e)(1).

-Team names in advertisements must include either: (i) the full licensed name of the real estate brokers, associate brokers or real estate salespersons who are part of the team, or (ii) if the names are not included, the team name must be immediately followed by “at/of [full name of the broker/brokerage].” See 19 NYCRR Section 175.25(e)(1).

For example:

Neil Garfinkel Team or The Garfinkel Team of Big Real Estate Company.

Implementation

-For one year after the Regulations are adopted, teams that have changed their names to comply with the Regulations may state they were “formerly known as” their prior team name. See 19 NYCRR Section 175.25(e)(1).

Non-Licensed Members of Team

-If any unlicensed individuals are named in an advertisement for a team, the advertisement must clearly state which individuals in the team are real estate licensees and which ones are not. See 19 NYCRR Section 175.25(e)(2).

2. WHAT IS AN ADVERTISEMENT?

DEFINITION

-19 NYCRR Section 175.25(a)(1) defines “advertising” and “advertisement” as any (i) promotion and (ii) solicitation related to **licensed real estate activity**, including advertising through

- mail
- telephone
- websites
- e-mail
- electronic bulletin boards
- business cards
- signs
- billboards
- flyers

-“Licensed Real Estate Activity”

Article 12-A – Section 440(1) defines real estate broker as:

“Whenever used in this article “real estate broker” means any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other **valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan**, as defined in §590 of the Banking Law, or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocater, or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the General Business Law governing real estate syndication offerings.

Accordingly, the definition would cover advertisements by real estate management companies and commercial real estate brokers.

NON-REAL ESTATE ACTIVITY

-Advertising does not include any commentary made by a licensed salesperson, associate broker or a real estate broker which is not related to the purpose of promoting licensed real estate activity. *See* 19 NYCRR Section 175.25(a)(1).

-Example: Facebook / Twitter / Linked-In

3. CONTENTS OF ADVERTISEMENTS

OVERRIDING THEME

-Article 12-A, Section 441-c(1)(a) of the Real Property Law prohibits “dishonest or misleading advertising.”

REQUIREMENTS – NAME / ADDRESS / PHONE NUMBER

-Advertisements MUST (i) indicate that the advertiser is a real estate broker or (ii) provide the name of the real estate broker or real estate brokerage AND either: (x) the full address of the real estate broker or real estate brokerage or (y) the telephone number of the real estate broker or real estate brokerage. See 19 NYCRR Section 175.25(c)(1).

NAMES OF ASSOCIATE BROKERS AND REAL ESTATE SALESPERSONS

-The advertisement MAY include the names of one or more associate real estate brokers or real estate salespersons associated with the real estate broker or real estate brokerage placing the advertisement. See 19 NYCRR Section 175.25(c)(2).

-Where an advertisement includes the name of an associate broker, real estate salesperson or a team, the NAME OF THE REAL ESTATE BROKER and the real estate brokerage MUST also be printed on the advertisement. See 19 NYCRR Section 175.25(c)(2).

-Real estate brokers, associate real estate brokers and real estate salespersons MUST use the name under which they are licensed. See 19 NYCRR Section 175.25(c)(3).

-A “NICKNAME” may be used, provided that the fully licensed name of the licensee is also listed in a clear and conspicuous fashion. See 19 NYCRR Section 175.25(c)(3).

LICENSE TYPE

-Advertisements MUST correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. See 19 NYCRR Section 175.25(c)(4).

-Although licensees may ABBREVIATE the type of license that they hold (provided that the abbreviation is not misleading), the use of the titles “sales associate,” “licensed sales agent” or “broker” is prohibited. See 19 NYCRR Section 175.25(c)(4).

For Example: Lic. Real Estate Broker or Lic. R.E. Broker

3. CONTENTS OF ADVERTISEMENTS (CONTINUED)

TITLES

-As you know, the Department of State recently issued an opinion regarding the use of corporate titles by real estate salespersons and associate real estate brokers.

-19 NYCRR Section 175.22 prohibits the ownership of voting stock by real estate salespersons. A recent opinion permits ownership of non-voting stock.

-Article 12A, Section 441(b)(2) proscribes that a real estate salesperson's license shall not be issued to any officer of a licensed, corporate real estate broker, a manager or member of a limited liability company or to a member of a co-partnership licensed as a real estate broker.

-When looking at these two statutes, the DOS states: "Taken together, these provisions prohibit a real estate salesperson from holding voting stock or being appointed as an officer in a corporate brokerage, a manager or membership of a limited liability company or a member of a partnership."

-The DOS then states: "Although the statute and regulation refer to "real estate salesperson," they apply equally to associate brokers.

-The DOS has issued further guidance that any associate real estate broker can be elevated to a "real estate broker" and a real estate broker may have a corporate title.

ADDITIONAL CONTACT INFORMATION

-An associate real estate broker, real estate salesperson or team may provide additional contact information, such as post office box, in an advertisement. See 19 NYCRR Section 175.25(c)(5).

TELEPHONE NUMBERS

-A real estate broker, associate broker, real estate salesperson or team may provide telephone numbers other than that of the brokerage in an advertisement, provided that the advertisement clearly identifies the type of such other telephone number as desk, home, cell phone, or otherwise. See 19 NYCRR Section 175.25(c)(7).

LOGOS

-"Logo" is defined as any graphic mark used to identify a real estate broker, associate real estate broker, real estate salesperson or team. See 19 NYCRR Section 175.25(a)(4).

-A real estate team, associate real estate broker or real estate salesperson may use a DIFFERENT LOGO than the logo used by the real estate broker or real estate brokerage

3. CONTENTS OF ADVERTISEMENTS (CONTINUED)

company with whom they are associated, PROVIDED that the name or logo of the real estate broker or brokerage is also printed in the advertisement. See 19 NYCRR Section 175.25(c)(8).

-A PHOTOGRAPH of a real estate broker, associate real estate broker, real estate salesperson or team contained in an advertisement is not considered a “logo” for purposes of the Regulations. See 19 NYCRR Section 175.25(a)(4).

PROPERTY DESCRIPTION

-All advertisements must include an honest and accurate description of the property to be leased or sold and must not be misleading. See 19 NYCRR Section 175.25(c)(9).

-Advertisements which state that a property is located in the vicinity of a certain geographical area or territory must also include the name of the geographical area or territorial subdivision in which the property is actually located. See 19 NYCRR Section 175.25(c)(9).

- Use by real estate brokers, associate real estate brokers and real estate salespersons of a name to describe an area that would be misleading to the public is prohibited. See 19 NYCRR Section 175.25(c)(9).

4. TYPES OF ADVERTISEMENTS

CLASSIFIED ADVERTISEMENTS

-Classified and multi-property advertisements **MUST** indicate that (i) the advertiser is a real estate broker or a real estate brokerage company or (ii) provide the name of the real estate broker or real estate brokerage company. See 19 NYCRR Section 175.25 (d)(1).

-Classified and multi-property advertisements **MAY** omit the license type of any associate real estate broker or real estate salesperson named in the advertisement. See 19 NYCRR Section 175.25 (d)(1).

WEB BASED ADVERTISING

-Websites **MAY** be created and maintained by associate real estate brokers, real estate salespersons and teams **PROVIDED** the supervising real estate broker authorizes and supervises the creation and maintenance of the website. See 19 NYCRR Section 175.25(d)(3)(a).

-Every page of such website **MUST** include all the information required by the Regulations. See 19 NYCRR Section 175.25(d)(3)(b).

-A link to the real estate broker's (or real estate brokerage company's) website **MUST** be placed on the home page of the associate broker, salesperson or team's website if the real estate broker has a website. See 19 NYCRR Section 175.25(d)(3)(b).

E-MAIL

-An initial e-mail from a real estate broker, associate real estate broker, real estate salesperson or team to a client or potential client **MUST** include all the information required by the Regulations. See 19 NYCRR Section 175.25(d)(4).

-All subsequent emails may omit the information required in the original email. See 19 NYCRR Section 175.25(d)(4).

BUSINESS CARDS

-All business cards **MUST** contain (i) the business address of the licensee, (ii) the name of the real estate broker or real estate brokerage with whom the licensee is associated **and** (iii) the office telephone number for the associate real estate broker, real estate salesperson or team. See 19 NYCRR Section 175.25(d)(2).

-The DOS has issued an opinion that you do not need to have "Real Estate Broker" to define the Broker on Associate Real Estate Broker and Real Estate Salesperson's business card.

4. TYPES OF ADVERTISEMENTS (CONTINUED)

-Please note that the DOS has a FAQ regarding Business Cards that is on the DOS website. The new regulations cover some of what is covered in the FAQs. The following items are not mentioned in the Regulations and therefore, I believe, are still applicable:

- business cards must be truthful and not misleading
- the inclusion of additional information is permissible, (business e-mail address, specialization, trade affiliations or accreditations), providing the information is true and not misleading.
- a licensee may include their home e-mail address, cell and/or home telephone numbers, provided that there is a notation that such are residence numbers, and further that such use is not extended to any activity that would constitute branch office operation.

PHOTOGRAPHS

-Photographs of property which are posted on a real estate broker's website cannot be used or reproduced unless the copyright holder of the photograph provides prior written consent. See 19 NYCRR Section 175.25(b)(2)(c).

SIGNS

PERMISSION OF OWNER

-19 NYCRR Section 175.11 states that "No sign shall ever be placed on any property by a real estate broker without the consent of the owner."

FOR SALE SIGNS

-Unless otherwise prohibited by local law, any property listed through a real estate broker must be advertised as such, and any signage placed upon such property soliciting the sale or lease of the property must identify the representative broker or brokerage. See 19 NYCRR Section 175.25(d)(5).

HOME OFFICES

-A residence may be used as an office provided that is properly licensed by the Department of State. See 19 NYCRR Section 175.25(c)(6).

-Remember with a Home Office, Article 12-A, Section 441-a and 19 NYCRR Section 175.26 still apply:

Article 12-A, Section 441-a states:

"Each licensed real estate broker shall have and maintain a definite place of business within this State, and shall conspicuously post on the outside of the building in which

4. TYPES OF ADVERTISEMENTS (CONTINUED)

said office is conducted a sign of a sufficient size to be readable from the sidewalk indicating the name and the business of the applicant as a licensed real estate broker, unless said office shall be located in an office, apartment or hotel building, in which event the name and the words “licensed real estate broker” shall be posted in the space provided for posting of names of occupants of the building, other than the mail box.”

19 NYCRR Section 175.26 (entitled Posting of business signs) states:

“In an apartment building where the posting of signs is not permitted in the lobby pursuant to the rules and regulations of the building, said sign must be posted on the corridor wall next to the entrance door of the dwelling unit or on the entrance door of the dwelling unit or on the entrance door of the dwelling unit in which the business is conducted.”