

## REAL ESTATE ADVERTISING

Hello, Michigan Realtors® and welcome back to the “Letter of the Law”, a monthly video series designed to provide introduction and analysis on various legal issues impacting your industry. I’m Brian Westrin and today’s Letter of the Law is a special edition focused on real estate advertising compliance.

As many Realtors® have heard by now, effective January 1, 2018, in any advertising that includes the name of an associate broker, salesperson or team, the individual licensee’s name (or team name) cannot be in larger type size than the name of the employing broker. This change has caused many employing brokers and licensees to reexamine both existing law and their current advertising.

Under the advertising rules that have been in place for decades, all real estate advertising must include the licensed name of the employing broker.<sup>1</sup> This requires that a broker use the name on file with the Department of Licensing and Regulatory Affairs (hereafter referred to as “the Department”). It is important to note that the broker’s logo or franchise name is not sufficient. However, if the broker has an assumed name on file with the Department, the broker can advertise in that name.<sup>2</sup> In addition to the broker’s name, the advertising must include either the broker’s telephone number or street address.

Beginning January 1, 2018, in any real estate advertising, the type size used for the employing brokerage’s name must be at least as large as the type size used for the individual licensee’s or team name.<sup>3</sup> The names do not need to be in the same font or color, and it is not the case, for example, that if the salesperson’s name is in bold type then the broker’s name must also be in bold type. However, it is still the case that the advertisement must include the employing broker’s name as licensed or an assumed name on file with the Department. The advertisement

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<sup>1</sup> Rule 329; now MCL 339.2512e(1).

<sup>2</sup> Rule 301; now MCL 339.2512e(5).

<sup>3</sup> MCL 339.2512e(3)(b).

must still include the employing broker's phone number *or* address; however, the statute does not regulate the size of the type for the phone number or address.<sup>4</sup>

### **Compliance Standards**

Over the last several months, Michigan Realtors® has been working constructively with the Department towards developing helpful compliance standards for licensees to utilize. On September 18<sup>th</sup> of this year the Department issued a communication to all licensees relative to its interpretation of "type size." Since "type size" is not defined in the occupational code, the Department has stated that it will interpret it to mean either:

1. The height of the block containing the name of the associate broker, salesperson, or cooperating group of associate brokers or salespersons does not exceed the height of the block containing the name of the employing broker, OR
2. The point size of the majority of the letters in the name of the associate broker, salesperson, or cooperating group of associate brokers or salespersons does not exceed the point size of the tallest word in the name of the employing broker.

An advertisement that satisfies **EITHER** of these interpretations is in compliance.

Recognizing that much of real estate advertising is in the visual medium, Michigan Realtors® has developed the following visuals to help illustrate the Department's interpretation of type size. To remain concise, we'll refer to the associate broker, salesperson or team collectively as the "Licensee" and the employing broker as the "Firm."

### **Height of the Block**

The first interpretation focuses on the height of the block containing the name of the Licensee and the height of the block containing name of the Firm.

1. The first illustration features a comparison that satisfies the first interpretation of type size; that is, the block height of the name of the salesperson, "Simone Licensee," is 4.5 inches, and the block height of the name of the Firm, "Acme Brokerage Capital City Firm," is also 4.5 inches. The advertisement also includes the office phone number for the Firm, so it is otherwise compliant with the Code requirements.

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<sup>4</sup> MCL 339.2512e(3)(a).

2. The second illustration also satisfies the first interpretation because the block height of “Simone Licensee” is smaller than the block height of the name of the Firm. It is important to note that the legal name of the Firm on file with the Department in this illustration is “Acme Brokerage Capital City Firm”.

3. The third illustration also satisfies the first interpretation because the block height of the name of the Licensee – in this case, the Team – is equal to the block height of the name of the Firm. Remember that the block height of the name of the Firm must be greater than or equal to the block height of the name of the Licensee. Phone numbers and addresses are not included in the size calculation.

### **Point Size of the Majority**

The Department’s second interpretation focuses on the Point Size of the Majority of letters in the name of the licensee when compared with the Point Size of the tallest word in the name of the Firm.

4. In this 4th illustration, while the point size of the first and last name of the Licensee is not the same, the point size of the last name is used for comparison purposes because that word has the most letters. Similarly, while all of the words in the Firm name are not the same point size, the point size of “Acme Brokerage” is used because those letters are taller than the letters in “Capital City Firm.” Since the point size of “Licensee” is equal to the point size of “Acme Brokerage” – both at 240 points – this advertising illustration is in compliance with the second interpretation.

5. The fifth illustration includes both the name of an individual Licensee, “Simone Licensee,” and the name of a team, “Simone Team.” Under the advertising rules, both the name of the individual Licensee and the name of the team would be compared to the name of the Firm. Since the point size of both the name of the individual and the team are equal to the point size of the Firm name, the advertisement is in compliance with the second test. Note again that for purposes of comparison, we look at the tallest word in the Firm name, in this case, “Acme Brokerage,” at 180 points.

6. In the last illustration, the agent uses large stylized lettering for the first letter of both her first and last names. Under the second interpretation, the focus is on the size of the majority of letters in the Licensee’s name – so, the relevant point size here is 210 points, not 420

points. Since the letters in the name of the Firm are also 210 points, this advertising illustration is in compliance with the second interpretation.

### **Corporate Shield**

We have now discussed the occupational code's real estate advertising requirements at length. While the type size requirement represents a new consideration for brokerages and affiliated licensees, this requirement has also served to remind everyone of the decades-old requirement that all advertising must include the licensed name of the broker (as on file with the Department). What many Realtors® may not fully appreciate is that advertising in the name of the company is both an Occupational Code requirement and an important consideration relative to protections under corporate law and liability insurance.

If an individual agent or team does not advertise in the name of the company, the individual agent (or team member) may be personally liable for any judgment arising out of the agent's business.

If, for example, I respond to a solicitation to list my home from "Team Smith" and later find out that unbeknownst to me, "Team Smith" is simply a group of agents within "XYZ Realty Corporation," a court may hold the "Team Smith" agents personally liable for any damages I incur relating to my listing. The analysis of this issue under the law is fairly straightforward. In order for me the seller to be forced to look only to the corporation's assets for any damages, it must be shown that at the time I contracted for service, I was aware – or should have been aware – of the fact that that I was dealing with a corporation.

### **Regulatory Trends**

A number of states have statutes that prohibit an individual or team from advertising "in a way that suggests that the individual or team is an independent real estate brokerage." Other states require that the firm name be "more prominent" than the name of the individual agent or team. By regulating relative type size, Michigan adopted a more objective approach. That being said, Michigan Realtors® should keep in mind that in addition to complying with the relative type size requirement, for liability reasons, licensees also need to make certain that the advertising makes clear that the agent or team is part of the real estate company and not a separate entity. For example, a team name that uses the word "group" or "company" may be viewed as suggesting that the team is an independent entity. Even if such advertisement

complies with the Occupational Code's relative type size requirements, a court could nonetheless find that in this situation, the team members are not protected by their brokerage firm's corporate shield.

### **Conclusion**

As a review, the requirement is that the type size of the name of the Firm must be greater than or equal to the type size of the name of the Licensee. Per the Department's published interpretation of "type size," this requirement can be met by comparing either block height or point size. An advertisement that satisfies either is compliant. It is not necessary to satisfy both of the Department's interpretations. The purpose behind having two distinct interpretations is to preserve the goal of the advertising rule – that is, to make sure that the advertising makes clear what company is doing the advertising – while at the same time, providing licensees with creative flexibility. Remember that these are minimum requirements. A Firm can always adopt more stringent requirements than the law dictates. Finally, it makes very good sense to adopt brokerage standards related to advertising to avoid any occupational code issues and to protect against consumer confusion and corporate liability issues.

As always, thank you for tuning in and watching this installment. If you have questions or would like to suggest topics for future videos, please send suggestions to the email below. The visual illustrations utilized in this video are also available as a PDF beneath the transcript. Again, thanks for watching and see you next time.