

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Real Estate Agency	863
Agency and Division	Administrative Rules Chapter Number

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Rules Coordinator	Address	Telephone

RULE CAPTION

Real estate advertising.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

May 21, 2008	10 a.m.	Real Estate Agency	Laurie Skillman
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND: 863-015-0125 Advertising

Stat. Auth.: ORS 696.385

Other Auth.:

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

RULE SUMMARY

Advertising rule includes (1) the licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising related to professional real estate activity; (2) the licensee's licensed name must be used or a common derivative of the licensee's first name; (3) all advertising must be submitted to the principal real estate broker for review and approval prior to releasing advertising to the public; (4) requirements for licensees advertising in electronic media and by electronic communication; and (5) requirements for licensees who use the terms "team" or "group" in advertising.

Replaces temporary rule in effect January 18, 2008, through July 15, 2008.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

5 p.m., May 21, 2008

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

/s/ Dean Owens
Signature

Dean Owens, Deputy Commissioner
Printed name

April 15, 2008
Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Real Estate Agency
Agency and Division

863
Administrative Rules Chapter Number

In the Matter of: Amending OAR 863-015-0125

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.) Real estate advertising.

Statutory Authority: ORS 696.385

Other Authority:

Stats. Implemented: ORS 696.020 & 696.301(1), (4)

Need for the Rule(s): The proposed permanent rule is a result of a large rules working group composed of members of the real estate industry, members of the Real Estate Board and the Agency. The previous rule was confusing because many registered business names are contained in a logo and it was unclear what “type size” would be required. This rule states that the licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be “prominently displayed, immediately noticeable, and conspicuous” in all advertising related to professional real estate activity.

Documents Relied Upon, and where they are available: Letters from real estate licensees; minutes of the Brokerage/Licensing Rule Review Work Group of October 10, 2007, October 24, 2007, November 20, 2007, November 27, 2007, and December 14, 2007; and minutes from Real Estate Board’s special meeting of January 14, 2008, all available at the Real Estate Agency office, 1177 Center Street NE, Salem, Oregon.

Fiscal and Economic Impact, including Statement of Cost of Compliance: This rule is revenue neutral for the Real Estate Agency. The amendment will allow real estate licensees to advertise in a less costly manner. Currently, there are approximately 23,500 real estate licensees who will be impacted by this rule. The Real Estate Agency has used all available information to project any significant economic effect on businesses.

How were small businesses involved in the development of this rule? A large rule review work group composed of members of the real estate industry, members of the Real Estate Board and Agency staff worked on this rule. Members of the work group represent both large and small businesses.

Administrative Rule Advisory Committee consulted?: Yes.
If not, why?:

/s/ Dean Owens
Signature

Dean Owens, Deputy Commissioner
Printed name

April 15, 2008
Date

**TEMPORARY ADVERTISING RULE
EFFECTIVE IN JANUARY 18, 2008 TO JULY 16, 2008**

863-015-0125

Advertising

(1) As used in this rule, "advertising" and "advertisement" include all forms of representation, promotion and solicitation disseminated in any manner and by any means for any purpose related to professional real estate activity, including, without limitation, advertising by mail; telephone, cellular telephone, and telephonic advertising; the Internet, E-mail, electronic bulletin board and other similar electronic systems; and business cards, signs, lawn signs, and billboards.

(2) Advertising by a licensee, in process and in substance, must:

- (a) Be identifiable as advertising of a real estate licensee;
- (b) Be truthful and not deceptive or misleading;
- (c) Not state or imply that the real estate broker or property manager associated with a principal real estate broker is the person responsible for operating the real estate brokerage or is a sole practitioner or principal broker;
- (d) Not state or imply that the licensee is qualified or has a level of expertise other than as currently maintained by the licensee; and
- (e) Be done only with the written permission of the property owner(s) or owner(s)' authorized agent.

(3) Advertising that includes the licensee's name must:

- (a) Use the licensee's licensed name; or
- (b) Use a common derivative of the licensee's first name and the licensee's licensed last name.

(4) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager must be prominently displayed, immediately noticeable, and conspicuous in all advertising.

(5) Except as provided in section (8) of this rule, a real estate broker must:

- (a) Submit proposed advertising to the licensee's principal broker for review and receive the principal broker's approval before publicly releasing any advertisement; and
- (b) Keep a record of the principal broker's approval and make it available to the Agency upon request.

(6) Except as provided in section (8) of this rule, a principal real estate broker:

- (a) Is responsible for all advertising approved by the principal broker that states the principal real estate broker's licensed name or registered business name; and
- (b) Must review all advertising of a real estate broker or a property manager who is associated with the principal real estate broker.

(7) A principal real estate broker may delegate direct supervisory authority and responsibility for advertising originating in a branch office to the principal broker who manages the branch office if such delegation is in writing.

(8) A licensee associated with a principal real estate broker may advertise property owned by the licensee for sale, exchange, or lease option without approval of the principal real estate broker, if:

- (a) The property is not listed for sale, exchange, or lease option with the principal broker;
- (b) The advertising states that the property owner is a real estate licensee; and
- (c) The advertising complies with all applicable other applicable provisions of ORS chapter 696 and its implementing rules.

(9) Advertising in electronic media and by electronic communication, including but not limited to the Internet, web pages, e-mail, e-mail discussion groups, blogs, and bulletin boards is subject to the following requirements:

- (a) Advertising must comply with all other requirements of this rule;
- (b) Advertising by a licensee must include on its first page:
 - (i) The licensee's licensed name as required in section (3) of this rule;
 - (ii) The licensed name or registered business name of the principal real estate broker, sole practitioner real estate broker, or property manager; and
 - (iii) A statement that the licensee is licensed in the State of Oregon.
- (c) Sponsored links, which are paid advertisements located on a search engine results page, are exempt from the requirements contained in subsection (b) if the first page following the link complies with subsection (b).
- (d) E-mail from a licensee is exempt from the requirements of subsection (b) if the licensee's initial communication contained the information required by subsection (a).

(10) No advertising may guarantee future profits from any real estate activity.

(11) A licensee may use the term "team" or "group" to advertise if:

- (a) The use of the term does not constitute the unlawful use of a trade name and is not deceptively similar to a name under which any other person is lawfully doing business;
- (b) The team or group includes at least one real estate licensee;
- (c) The licensee members of the team or group are associated with the same principal broker or property manager;
- (d) The licensee members of the team or group use each licensee's licensed name as required under section (3) of this rule;
- (e) If any non-licensed individuals are named in the advertising, the advertising must clearly state which individuals are real estate licensees and which ones are not; and
- (f) The advertising complies with all other applicable provisions of ORS chapter 696 and its implementing rules. *[end of rule]*