

HAWAII REAL ESTATE ADVERTISING RULES

Real estate advertising is ruled by several regulatory organizations. We will cover requirements of the State Real Estate Licensing Laws and Rules, the Professional and Vocational Licensing Act, the National Association of Realtors®, and the Hawaii Association of Realtors®.

In advertising and marketing real estate, a licensee may find himself in violation of Hawaii Revised Statutes (HRS Chapter 467), Hawaii Administrative Rules (HAR Chapter 26) and the Professional and Vocational Licensing Act (HRS Chapter 436B) by engaging in any of a number of improper practices. These practices would be grounds for reprimand of the licensee, or denial of renewal, suspension, or revocation of the licensee.

A licensee may be disciplined for a number of things. These include making a false promise likely to persuade a purchaser, even though no purchaser acts to his detriment as a result of the promise; making a material misrepresentation to a prospective purchaser even though the purchaser did not buy the property; or making a strongly misleading statement to a buyer, whether or not the seller knew and approved of the statement.

More specifically, a licensee may be disciplined if he knowingly or negligently;

- makes any material misrepresentation, false promise, or pursues a continued course of material misrepresentation in matters related to professional real estate activity, whether or not damage or injury results.
- authorizes, directs, makes, prints, distributes, circulates, or publishes, in the course of the licensee's business, materially misleading or untruthful advertising, descriptions, statements, representations, or promises of such character as reasonably to induce a person to act in a manner that may lead to damage or injury to the person, whether or not damage or injury actually occurs.
- guarantees, authorizes, or permits any person to guarantee future profits which may result from the resale of real property.

All persons who hold a real estate license must comply with Hawaii Revised Statutes (HRS) Chapter 467 and Hawaii Administrative Rules (HAR) Chapter 99 and the Professional and Vocational Licensing Act. Under these rules, advertising is considered to be all forms of representation, promotion, and solicitation disseminated in any manner and by any means of communication for any purpose related to professional real estate activity. This means it includes, without limitation, advertising activity conducted by magazine and newspaper ads, fliers, letters, lawn signs, promotional material, business cards, mail, telephone, the Internet, the World Wide Web, e-mail, electronic bulletin boards, signs, billboards or other similar electronic common carrier systems, and telephonic greetings or answering machine messages.

ADVERTISING REQUIREMENTS

Hawaii Advertising Laws and Rules

- All Advertising shall include legal name of brokerage firm or registered trade name (HAR 16-99-11 (a)).
- Brokerage firm must have written authorization before advertising property (HAR 16-99-3 (i)).
- All ads must identify licensee with licensee's brokerage firm. (HAR 16-99-11 (e) (2)).
- All materials that refer to the individual licensee's name shall: (1) include the licensee's legal name, name as licensed by the commission, or sole proprietor's trade name as licensed by the commission (HAR 16-99-11 (e)(I)).
- License can be revoked for making false promises through advertising (HRS 467-14 (3)).
- All materials that refer to the individual licensee's name shall:...(3) Specify that the licensee is a broker (B), or salesperson (S), or if a current member of the HAR, Realtor ® or Realtor-Associate (RA), (HAR 16-99-11 (e) (3)). Members of the new "All Realtor" local board may specify their license as R(S), R(salesperson), Realtor (Salesperson), or Realtor (S) and will be in compliance.
- Leasehold properties must be identified by the word leasehold (HAR 16-99-11 (d)).
- If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, shall be included and identified (HAR 16-99-11 (f)).

All advertising must be truthful and not deceptive or misleading. A real estate licensee may not use advertising for professional real estate activity in a manner indicating that the individual conducting the advertising is not a real estate licensee. Nor may a real estate licensee use any words that state or imply that he is qualified or has a level of expertise other than as currently maintained by the licensee. So, a licensee cannot advertise he is a GRI if he has not earned the designation.

HAWAII RULE 16-99-3 (i) (HAR)

"The brokerage firm shall not submit or advertise property without written authorization, and in any offering the price quoted shall not be other than that agreed upon with the owner as the offering price."

HAWAII LAW 467-14 (3) (HRS)

"... the commission may revoke any license issued...for any cause authorized by law, including but not limited to the following.....

(3)Pursuing a continued and flagrant course of misrepresentation, or making of false promises through advertising or otherwise."

HAWAII RULE 16-99-3 (b), (HAR)

“The licensee shall protect the public against fraud, misrepresentation, or unethical practices in the real estate field. The licensee shall endeavor to eliminate any practices in the community which could be damaging to the public or to the dignity and integrity or the real estate profession. The licensee shall assist the commission in its efforts to regulate the practices of brokers and salespersons in this State.”

Clearly, these laws and rules govern good practices in advertising. Advertising must be free from any misleading statements, including any misrepresentation as to the property itself, the terms of the sale, or the property value. Even if the misrepresentations are made inadvertently, they may trigger liability. For example, an owner tells the broker that the property is within “ABC” school district, and the agent, relying on the owner’s statement advertises the property as being within “ABC” school district. The principal broker, who is ultimately responsible for all advertising done under his license, and the salesperson named in the advertisement would be liable if that statement is incorrect, even if a secretary, ad agency, or other unlicensed person prepared the advertisement for the licensee.

HAWAII RULE 16-99-11 (a), HAR

“(a) All real estate advertising and promotional materials shall include the legal name of the brokerage firm or a trade name previously registered by the brokerage firm with the business registration division and with the commission. For advertising the promotional purposes only, a brokerage firm may:

- (1) Abbreviated “Incorporated,” “Corporation,” “Limited,” “General Partnership,” “Limited Partnership,” Limited Liability Company, or “Limited Liability Partnership” from the licensed name, and
- (2) Use “dba” in conjunction with the licensed name and a trade name.”

This 2001 SWAT (Slice Waste and Tape) rule change permits advertising in the legal name of the brokerage firm or its registered trade name. The Commission’s previous policy of not requiring these terms or abbreviations was in conflict with business registration laws for corporations and partnerships. Since the amended rules permit advertising with registered trade name ONLY, this may be an option to consider. For example: ABC Realty Corporation dba ABC Realty, could advertise under “ABC Realty.”

HAWAII RULE 16-99-11 (d), HAR

“(d) A leasehold property advertised for sale in any medium shall be identified by the word “leasehold.”

This 2001 rule change deletes the requirement that advertisements regarding fee simple property must identify the property as “fee simple” or “(FS)”. It also deletes the option that advertisements regarding leasehold property may identify the property with the designation of “(L)” and requires such advertisements to use the word “leasehold”.

HAWAII RULE 16-99-11 (e), HAR

“(e) All advertising and promotional materials that refer to the individual licensee’s name, including but not limited to business cards, shall:

- (1) include the licensee’s legal name, name as licensed by the commission, or sole proprietor’s trade name as licensed by the commission;
- (2) identify the licensee with the licensee’s associating or employing brokerage firm; and
- (3) specify that the licensee is a broker (B), or salesperson (S), or if a current member of the Hawaii Association of Realtors ®, Realtor ® or Realtor-Associate (RA).

This 2001 rule change is made clearer by understanding that “*individual licensee’s*” does not include corporation, partnership, LLC, LLP licensees. In addition, the *brokerage firm* (excluding sole proprietor broker) no longer has to identify the brokerage firm as a broker (B) or Realtor ®.

Proper Use of Nicknames

HAWAII RULE 16-99-19.1

“(a) An individual may designate a license name different from the individual’s legal name, provided that: (1) The license name of individual broker, broker-salesperson, or salesperson: (A) Shall include the individual’s full legal surname; (B) May include the individual’s initials, full legal first name, full legal middle name, full legal name, or nickname; and (C) May retain the individual’s former legal surname if the surname is legally changed subsequent to licensing, provided that the change is reported pursuant to section 16-99-5.

While the use of nicknames is allowed in advertising in Hawaii, the ethical use of nicknames requires that they not be created solely to influence the public.

Advertising Branch Office Addresses

HAWAII RULE 16-99-11 (f), HAR

“(f) If the address of any unregistered place of business is included in advertising materials, then the street address of the principal place of business or the branch office, as the case may be, shall be included and respectively identified as such.”

This 2001 rule change deletes the specific advertising requirements for “franchise.” To clarify the wording, an *unregistered place of business* includes unregistered branch offices.

Advertising need not contain a phone number. An ad need not include the seller’s asking price, the location of the property, the date the property will be available for possession, or any other details.

The requirement that telephone numbers appear in advertisements (Hawaii Rule 16-99-11 (g)) was deleted from the Hawaii Rules.

Supervision

All advertising must be under the direct supervision of the principal broker, unless the principal broker delegates supervisory authority to a Broker In Charge (BIC). The principal broker may delegate direct supervisory authority over advertising originating in a branch office to the BIC; however, the principal broker remains responsible for all advertising done under this real estate license. Salespersons must make the advertising immediately available to the principal broker or BIC and the principal broker or BIC must review and approve it prior to use.

HAWAII LAW 467-1.6, HRS

“(a) The principal broker shall have direct management and supervision of the brokerage firm and its real estate licensees... (c) The principal broker may delegate management and supervision duties to one or more brokers in charge subject to the principal broker’s written policies and procedures. The principal broker shall be responsible for the education, enforcement and records required of such policies and procedures.”

HAWAII RULE 16-99-2, HAR

“Broker in charge” means an individual broker licensee designated by the principal broker as the broker directly in charge of and responsible to the principal broker for the real estate operations conducted at the principal place of business or a branch office. The principal broker may designate one or more brokers in charge of the principal place of business or branch office, provided that there shall be at least one broker in charge of each branch office.”

Anyone may prepare an ad, including an unlicensed personal assistant, or an ad agency. But, if an unlicensed personal assistant prepares an ad for a licensee, the licensee must make the ad available for review by the principal broker or BIC and the principal broker or BIC must review it before the broker submits it for publication. If a licensee develops a web site or has business cards designed, these too must be submitted and reviewed before they are put to use. Ultimately, the PB/BIC is responsible for all ads.

HAWAII RULE 16-99-3 (g), HAR

“The licensee shall not acquire, rent, lease, or exchange an interest in or buy, rent, lease, or exchange for one’s self, any member of the licensee’s immediate family or brokerage firm, or any entity in which the licensee has any ownership interest, property listed with the licensee, licensee’s brokerage firm, or listed with any other brokerage firm or licensee without making the true position known in writing to the listing owner or property owner. When offering for sale, lease, exchange, or rental, property which the licensee owns or has an interest in, the licensee shall fully inform the principal broker of the licensee’s intention to sell, lease, exchange, or rent and of the licensee’s interest in the property. The licensee shall reveal the interest to the purchaser, lessee, or tenant in writing prior to accepting any offer.”

Advertising by real estate licensees for the rental or lease of property owned by the licensee or for the sale, exchange, lease option, or purchase of real estate in the licensee’s

personal transactions is also subject to the advertising rules. However, if the property is not listed with the licensee's brokerage and the licensee's principal broker does not require the advertising to be conducted in the name of the broker, the ad does not need to be in the licensed or registered name of the principal broker or supervised by the principal broker. It would however, have to indicate that the person advertising the property is licensed.