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June 12, 2025

Reminder of Advertising Laws

The Commission has received an increasing number of complaints and inquiries related to the unauthorized use of listings and property imagery by licensees who are not affiliated with the listing brokerage. This guidance document serves as a reminder of advertising laws under S.C. Code §40-57-135(E) and reinforces the Commission's expectation that all South Carolina licensees shall conduct themselves in a manner that is both legally compliant and professionally respectful.¹

Improper marketing² of listings—whether through social media, websites, video content, print materials, telephone calls, or direct communication—can interfere with professional relationships, mislead the public, and undermine the legal representation framework between property owners and the real estate firms they have chosen to represent their interests (a.k.a. interfere with an established agency relationship).

S.C. Code §40-57-135(E) states:³

(1) A licensee may not advertise, market, or offer to conduct a real estate transaction involving real estate owned, in whole or in part, by another person without first obtaining a written listing agreement between the property owner and the real estate brokerage firm with whom the licensee is associated. However, the signature of the owner of real estate is not required for a sublease agreement involving real estate if the lease allows for subletting. Licensees not associated with the listing brokerage firm may advertise real estate owned, in whole or in part, by another person only if they have written authorization from the listing brokerage firm and acknowledge the listing brokerage firm in the advertisement in a clear and conspicuous way. Authorization may be contained and obtained from the owner through the listing agreement.

¹ MLS rules and regulations are governed independently and must be followed in addition to state law. This memo does not interpret MLS rules but reaffirms that any use of listing content must also comply with South Carolina license law.

² Unless explicitly stated otherwise in this document, all references to marketing refers to public marketing.

³ Section 2 of S.C. Code §40-57-135(E) is new as of May 15, 2025. Close review of this section is recommended.

The advertising and marketing of real property is to be distinguished from the advertising and marketing of a contractual position in a sales agreement to purchase real estate. An advertisement that markets a contractual position to acquire real property from a person with either equitable or legal title and does not imply, suggest, or purport to sell, advertise, or market the underlying real property is permissible under this section.

(2) When advertising his real estate services or marketing real estate owned, in whole or in part, by another person in any medium, a licensee clearly must:

- (a) Identify the full name of the real estate brokerage firm with which the licensee is employed and supervised in accordance with regulations.
- (b) If advertising on the Internet or in another electronic media, the above requirements may be met by including a link from the advertisement to the homepage of the brokerage firm or property management company.

(3) If a real estate brokerage firm operates under a trade or franchise name, the identity of the franchisee or holder of the trade name clearly must be revealed.

Common Unauthorized Practices to Avoid

The following practices have been identified as recurring issues and are prohibited by South Carolina law unless proper authorization and attribution are obtained:

1. Advertising another brokerage's active listing without written consent.

Even if no imagery is used, simply referencing a property's address in any form—including social media captions, blogs, newsletters, print advertising, postcards, “buyer success” reels, or market updates—is a form of advertising. Unless you are the listing brokerage or have obtained compliant, written authorization from the listing brokerage and the property owner, this activity is prohibited by S.C. Code §40-57-135(E)(1). Compliant written authorization from the property owner may be contained in the listing agreement the property owner signed with their listing brokerage. S.C. Code §40-57-135(E)(1). Significantly, such advertising must acknowledge the listing brokerage firm in a clear and conspicuous way. S.C. Code §40-57-135(E)(1). Further, such advertising must also identify the full name of the real estate brokerage firm with which the advertising licensee is employed and supervised; this requirement may be met by including a link to the home page of the brokerage firm or property management company. S.C. Code §40-57-135(E)(2). Finally, if a real estate brokerage firm operates under a trade or franchise name, that name must also be clearly revealed. S.C. Code §40-57-135(E)(3).

Why it matters:

- The seller has given a single brokerage the exclusive right to determine how and where their home is marketed.
- Unauthorized references, even in text, create public confusion about who lawfully represents the property and may lead consumers to make decisions based on incorrect assumptions.

- This conduct interferes with the agency relationship and undermines the trust required for fair, lawful real estate transactions.

Examples:

- Sharing another brokerage's social media posting for a property without obtaining compliant written authorization from the listing brokerage and the property owner first. This would be a violation.
- Creating marketing materials derived from MLS data that could give the appearance that your brokerage represents identified listings of another brokerage, without obtaining compliant, written authorization from all listing brokerages and the property owners first. This would be a violation. This is to be distinguished from the use of an IDX feed on your brokerage website.⁴

2. Failing to clearly identify the listing brokerage in advertisements—even when permission is granted.

In cases where a non-listing South Carolina real estate brokerage has received written permission to advertise a property, that permission must:

- Be in compliance with S.C. Code §40-57-135(E)(1);
- Be granted by the listing brokerage and the property owner (property owner permission may be granted via the written listing agreement); and
- Be clearly documented and retained for brokerage records.

Once compliant authorization is obtained, the listing brokerage's full name must be clearly and conspicuously disclosed in all public-facing materials. S.C. Code §40-57-135(E)(1). Additionally, the advertising must also identify the full name of the real estate brokerage firm with which the advertising licensee is employed and supervised; this requirement may be met by including a link to the home page of the brokerage firm or property management company. S.C. Code §40-57-135(E)(2). And, if a real estate brokerage firm operates under a trade or franchise name, that name must also be clearly revealed. S.C. Code §40-57-135(E)(3).

Why it matters:

- When the listing brokerage's full name is omitted, the public may incorrectly assume that the advertising brokerage is the authorized representative of the seller.
- This erodes consumer trust and transparency, both fundamental to license law.
- Clear attribution of the listing brokerage supports the public's right to know who has been lawfully designated to speak on behalf of a property owner.

⁴ IDX (Internet Data Exchange) rules of an MLS typically contain provisions that require a listing agent to have obtained the seller/property owner's written approval to enter the listing on the IDX database with the understanding that the property will be displayed and managed according to IDX rules for the database including, but not limited to, display on other IDX member websites. IDX rules also normally require the listing brokerage's name to be prominently displayed and located on each listing on the search results screen. It is important for licensees to review the Terms of Use, rules, guidelines, or other governing documents for their IDX groups to ensure compliance with state law with regard to sharing listings of other licensees/brokerages, display/content, etc.

Example:

- You work for ABC Real Estate. You would like to share another brokerage's social media posting for a property after obtaining compliant, written permission to do so. The compliant, written permission can be as simple as an e-mail sent to the listing agent's professional e-mail address (in this example, at XYZ Real Estate) asking for permission and the listing agent responding that it is okay to share the listing because their listing client gave them permission to grant such advertising authority in the listing agreement. While creating the post for sharing on social media, titling the shared posting, "WOW! Look at this beautiful property just listed by XYZ Real Estate. Call me at ABC Real Estate if I can help you set up a tour of this gem." This would be permissible because of the addition of the phrase "just listed by XYZ Real Estate," which makes it clear which brokerage is representing the seller. Further, the statement "Call me at ABC Real Estate" makes it clear you are not representing the seller, but offering your services to buyers that might be interested in touring or purchasing the property.

3. Using property information for self-promotion without authorization.

Property-related information—such as images, videos, data, location, drone footage, and remarks—must not be used for branding or promotional purposes without written permission from the listing brokerage and property owner. S.C. Code §40-57-135(E). While MLS data is governed by its own rules, licensees must ensure their use of listing-related content also complies with South Carolina's advertising laws.

Why it matters:

- Content involving property-related information should not be used in any way that could misrepresent your role regarding that property or imply involvement with that property where none exists. S.C. Code §40-57-710(A).
- When licensees use another person's property to promote themselves or their business without proper authorization from the property owner and, if applicable, the listing brokerage, it can mislead the public, infringe on the property owner's control over how their property is portrayed, and infringe on the property owner's right to privacy.

Example:

- A beautiful home is listed for sale near you, but is not listed with your brokerage. You would like to take some photos and videos to promote your real estate business through social media and internet content. You would need obtain compliant, written permission from the property owner and the listing brokerage to take the photos and videos you would like to create to promote your business.
- Similarly, a home that is not listed for sale could be used to create such social media and internet content, so long as you have written permission from the home owner to take the photos and videos and share them on social media and the internet.

4. Misrepresenting involvement in a transaction.

Statements such as "We sold this home," "Secured for our buyers," or "Closed with our team," should only be used when the advertising brokerage had a direct and documented role in the transaction. S.C. Code §40-57-710(A)(4) and (5).

Why it matters:

- False, misleading, or ambiguous claims may lead consumers to believe a licensee has more experience or market presence than is accurate.
- This compromises consumer decision-making and may violate both advertising laws and ethical obligations under S.C. Code §40-57-710(A)(3), (4), (5), (21), (22), and (24).

Disclaimer: This guidance document is not intended as legal advice. The Commission is providing this guidance document to educate licensees on this area of the law with practical, everyday examples. This guidance document is only a high-level overview and may not take into consideration all the intricacies that may be present in a real-life event.