

BEHIND THE SIGN

Many members partake in letterbox drops advertising their services to members of the public. This is an important component of doing your job as a real estate agent. However, such distribution of promotional materials is subject to the REISA Code of Conduct.

Going 'Behind The Sign' is a breach of the REISA Code.

REISA CODE OF CONDUCT

The REISA Code defines 'Behind The Sign' behaviour as the act of a Practitioner approaching another Practitioner's Client to solicit business.

The REISA Code specifically prohibits 'Behind The Sign' behaviour with the exception of mass deliveries of promotional material which includes a disclaimer such as *"As this is part of a general promotion, please disregard this letter if you have already retained another real estate agent"*

Behind the Sign applies to BOTH sales and property management. First and foremost is the protection of the consumer from paying real estate agent fees twice.

SIZE OF DISCLAIMER

Legislation stipulates that disclaimers must be legible, transparent and prominent. It is REISA's opinion that this means that the above disclaimer should be no less than the same size and font than other main text found in the advertisement.

GENERAL PROMOTION

This would typically be promotional material delivered to all streets in a suburb or suburbs. This promotional material must have the appropriate disclaimer on it.

TARGETED PROMOTION - SALES

This would typically be promotional material delivered to a specific street or streets and would usually focus on a recent sale or listing in that street. This promotional material must have the appropriate disclaimer on it.

In addition to this disclaimer, a real estate practitioner must conduct appropriate research to determine whether any properties in that targeted search are currently listed or advertised for sale. REISA will ask to see such research if a complaint is made about targeted promotional material going 'behind the sign'

TARGETED PROMOTION – PROPERTY MANAGEMENT

Any targeted promotional material aimed at property management must have the appropriate disclaimer on it.

In addition to the disclaimer, a real estate practitioner should conduct appropriate research to determine whether any properties in that targeted search are currently leased or are listed with an agent. While your research may not be able to provide a definitive answer, it should provide you with a last listed date and price together with the relevant agent. It would be prudent to assume that a tenant is probably currently living in the property and that the agent is the current managing agent.

ACCURATELY ADVERTISING PROPERTY SALES

Many members are providing lists of recent sales in their area to market themselves and their Agency. Much if not a majority of those sales listed are not actually sold by the Agency providing the information to their selling area. Sometimes, a prominent recent sale is individually identified, again under the premise of providing useful and timely information to an Agency's marketing or catchment area.

The provision of such timely information about the market place is encouraged. However, in any way presenting a property as sold by you or one of your sales representatives, when in fact they have not is a breach of the REISA Code and legislation.

REISA CODE OF CONDUCT

The two most pertinent parts of the Code are as follows:

- A Practitioner should not solicit Clients of other Practitioners or engage in 'Behind the Sign' behaviour (with the exception of mass deliveries of promotional material which includes a disclaimer, such as "As this is part of a general promotion, please disregard this letter if you have already retained another real estate agent"); and
- A Practitioner should not exaggerate or misrepresent their services in their own right or compared with services offered by other Practitioners.

Practitioners should avoid even the mere possibility of a flyer being regarded by REISA as being misleading – specifically anything that enables a conclusion of a reasonable reader to assume that the advertiser is the listing and the selling agent.

WHEN THE PROPERTIES SOLD ARE NOT YOURS

The advertisement should make it very clear to the reader that the advertiser is not the selling agent. It is expected that the font size on any particular advertisement not be any smaller than the main text found in the rest of the advertisement.

It is not unusual for sales representatives to prepare advertising flyers that list properties that have recently been sold in an area. In fact, to be regarded as a local expert by members of the public, sometimes it is necessary.

Where that list includes properties that the sales representative or the agency has not been associated with it is very important that the text associated with the list discloses that important fact.

The text or lack of text should not imply that the sales representative or the agency has been responsible for the sale of properties included in the list that the agency has no association.

If the advertisement implies that the representative or the agency has sold properties in the list when that is not the case, then allegations of knowingly engaging in misleading or deceptive conduct could arise.

Agents should ensure that they approve all advertising that is conducted on behalf of their company and apply the following principles when consideration is given to whether an advertisement may be misleading:

1. What is the sense in which the ordinary reasonable reader would understand the advertisement?
2. It must be assumed that the readers will include the shrewd and the ingenuous, the educated and the uneducated and the experienced and inexperienced.
3. You should not assume that the reader will be able to supply for him or herself omitted facts or be able to resolve ambiguities.
4. Is the advertisement capable of more than one meaning? The question of whether the conduct of placing the advertisement is misleading or deceptive conduct must be tested against each meaning which is reasonably open. In other words, the advertisement will be misleading or likely to deceive if any reasonable interpretation of it would lead a member of the class, who can be expected to read it, into error.

FALSE AND MISLEADING REPRESENTATIONS

A real estate practitioner must not make false or misleading statements in relation to advertising their services or in advertising designed to secure a listing.

REISA CODE OF CONDUCT

The pertinent sections of the Code are as follows:

- A Practitioner should uphold the honour and dignity of the profession and not engage in any activity that may bring the profession into disrepute and in particular, conduct business and personal activities in compliance with the Code and Legislation
- A Practitioner should act in an honest, forthright and transparent manner in all real estate dealings
- A Practitioner should not exaggerate or misrepresent their services in their own right or compared with services offered by other Practitioners.

False and misleading representations are not only a breach of the REISA Code but also the Australian Consumer Law.

EXAMPLES OF FALSE AND MISLEADING REPRESENTATIONS

If a real estate practitioner delivers general or targeted promotional material, a statement saying that the real estate practitioner “has a buyer interested” when none actually exists, is a false and misleading representation.

If a real estate practitioner delivers a hand written note either as general or targeted promotional material, a statement that the real estate practitioner “has someone who wants to move into the area” when none actually exists, is a false and misleading representation.