



Do you know your advertising requirements?

The Department of Commerce (the Department) reminds agents and sales representatives of their obligations in relation to the advertising and marketing that may be placed to promote both properties in their portfolio and also themselves.

Section 62(2) of the *Real Estate and Business Agents Act 1978* (REBA Act) requires advertisements relating to the business of an agent to contain sufficient details to identify the agent. The Department's view on the minimum requirements within an advertisement is that the registered business name of the agency that is endorsed on their triennial certificate and the office telephone number are to be stated. The mobile number, email or website of an agent or sales representative can also be included in an advertisement.

When referring to your role at the agency within an advertisement, your choice of terminology matters:

- If you are licensed and are the holder of a triennial certificate, you can identify yourself as an agent.
- If you are the holder of a certificate of registration, you are a sales representative. In some cases, 'sales representative' may be replaced by another title such as salesperson, sales consultant etc.
- If your certificate has a condition restricting you to property management transactions only, you are a sales representative restricted to property management. However you are likely to be called a 'property manager'.

Within advertisements you can identify yourself by the chosen title so long as it does not mislead the public to believe you are entitled to carry out duties which you are not entitled to undertake – i.e. sales representatives cannot advertise themselves using terms such as 'agent', 'principal' or 'licensee' as this suggests they are a licensed agent, which is not the case.

Agents and sales representatives should also be mindful of their obligations under the Code of Conduct for Agents and Sales Representatives 2011 (the Code) when composing advertisements.

Section 8 of the Code provides that an agent and person in *bona fide* control must take reasonable steps to ensure employees comply with the provisions of the REBA Act, the Code and any other statutes. This includes the requirements under the Australian Consumer Law (the ACL).

In addition, section 9 of the Code requires an agent to exercise due skill, care and diligence. In certain circumstances, an agent may not be exercising the required care and diligence if they fail to confirm the accuracy of a document or advertising being issued by their sales representatives to the general public.

Under the ACL it is unlawful for a business to make false or misleading representations about goods or services when supplying, or offering to supply, or promoting those goods or services.

As conduct is seen to be misleading and deceptive if it has the ability to induce error, agents should ensure the details in advertisements are concise and accurate as well as being able to be substantiated.

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As part of the advertising process, any advertisement in respect of the business of the agent shall not be published without the agent's authority as per section 62(1) of the REBA Act. In addition, section 132 of the REBA Act requires an unlicensed person to be constantly supervised and controlled by the appropriately licensed person within the agency, namely a licensee, person in *bona fide* control or a nominated branch manager.

Under the REBA Act, an agent carrying on business as an agent can only do so using one business name, which is required to be endorsed on their triennial certificate. In addition, agents carrying on the business of an agent under the business name shall have their surnames and initials on all correspondence from them in that business.

The REBA Act permits an agent to carry on business as a real estate agent under one business name and as a business agent under another business name at the same time, provided that both business names are endorsed on their triennial certificate.

An agent who alters the name, style, title or designation under which they carry on business as an agent is required to provide the Commissioner with written notice of the change within 14 days after first using the alteration.

Previous information outlining advertising matters has been published in an article, Compliance issues regarding advertising, on page 6 of [Real Estate News issue 6](#). Information on the obligations of real estate agents and sales representatives is available on the Consumer Protection [website](#) or enquiries can be made by email: consumer@commerce.wa.gov.au or by calling **1300 30 40 54**.

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