



Marketing and advertising

- facilitated meeting notes

Allow
2
hours

This is an estimate only. You may wish to cover this topic in two or more sessions.

You'll need

- A laptop or other device with internet access and a screen to project on to.
- The ability to play videos with sound.
- Paper and pens for group activities.
- REA marketing and advertising PowerPoint presentation for the facilitator to use (optional, download from rea.govt.nz/resources).
- Copies of the Code of Conduct for staff to refer to (supplied).
- A copy of your agency policy or process for marketing and advertising.

Preparation

- Familiarise yourself with the information in this pack and the PowerPoint presentation if you choose to use it.
- Watch the video before showing your staff so you can think about discussion questions.
- Familiarise yourself with your agency policy or process for marketing and advertising.
- Brainstorm some examples of marketing and advertising complaints or issues your agency has experienced in the past.

Introduction to your meeting

10
mins

Tell attendees that:

- while advertising and marketing can be relatively straightforward, one of the most common issues in complaints to REA is that the representations a licensee has made about a property are misleading or incorrect
- the impact of misleading or incorrect advertising can be a high cost to customers and clients – you will have to deliver on the representations you've made or risk paying compensation for them
- the Real Estate Agents Act 2008 (the Act) and the Real Estate Agents Act (Professional Conduct and Client Care) Rules 2012 (the Code of Conduct) set out specific requirements for marketing and advertising a property or business
- marketing and advertising obligations exist across all sectors of real estate – residential, rural, commercial and business sales
- today's session(s) can be counted as 2 hours towards **non-verifiable training** (if all sessions are attended).

In today's session, we're going to:

- watch the REA video about marketing and advertising
- share experiences of best-practice marketing and advertising and examples that you don't think meet standards set out in the Code of Conduct
- discuss the importance of accurately representing a property when marketing and advertising it
- consider various types of advertising and discuss whether it's making an unsubstantiated representation
- run some activities including scenarios and a quiz.

The aims of today's session are to:

- help participants to understand their obligations when marketing a property, business, lifestyle block or farm
- learn from each other's experiences in marketing property to understand where issues tend to arise
- know where to go for more information and support about handling marketing and advertising issues.

STEP

1

Watch and discuss the video

20
mins



REA has created a video to provide an overview of the main obligations licensees need to remember when marketing and advertising a property or their services. It's a great way to start your session, and over the next 2 hours (or however you decide to break up and run the session), the meeting pack will delve deeper into the obligations and test participants' knowledge along the way.

The video is about 5 minutes long. You may wish to pause the video to discuss some points.

Below are a few suggested times to pause and ask questions:

- **1:06** What must you do if you find out that information you have included in advertising material is incorrect?
- **1:48** What does rule 9.4 mean for advertising a property based on price?
- **2:40** Does anyone know what 'puffery' is?
- **4:30** Can you leave a property listing on your website if it does not sell?

When you play the video after pausing it, it will provide the answers to the suggested questions above.

Here are a few suggested questions to generate general discussion once you have finished watching:

- What were the key takeaways from the video?
- How does your agency policy or process for marketing and advertising help you to meet the obligations set out in the video?
- Is there anything you might do differently after watching the video?

You can find the marketing and advertising video at rea.govt.nz/marketing or click to play it straight from the PowerPoint presentation.



STEP
2

Activity – discuss participant experiences of marketing or advertising a property

15
mins

The purpose of this activity is to:

- share stories and, more importantly, learnings
- help the group to feel comfortable talking about the topic and understand that the objective isn't to accuse people of wrongdoings but to learn from past experiences
- make the group aware of why it is important to check whether your marketing and advertising could be perceived as misleading and whether it meets standards set out in the Act and Code of Conduct
- make the group aware that, if they are ever unsure about whether the way they have marketed or advertised a property is problematic, it's OK to reach out for support, both within and outside of the agency.

Task: Facilitate a discussion about situations where the group may have faced problems with how a property was marketed or advertised. Discuss why it was problematic and how the problem was resolved. These can be situations faced either as individuals or as an agency.

It may be easier for larger groups to break into groups of four to seven people for this exercise so everyone gets a chance to share examples. After 10 minutes, ask each group to share one key example/learning with the wider group.

Invite everyone to share their experiences. Be sure to cover off **how, if at all, they might handle it differently** if they were to face the situation again.

Questions that may help to generate discussion

These are also included in the PowerPoint presentation. Think about what your answers would be in advance:

- Describe a listing you had where the advertising may have been questioned by a customer or your vendor. What happened, did anything go wrong and what were the learnings? How were you supported through it?
- Describe a situation where you felt a listing's advertising potentially broke rules set out in the Code of Conduct but were not sure.
- Describe a situation where you wanted to make a claim about a property or business but weren't sure if you could.
- Describe a situation where a potential buyer asked difficult questions about a property's features at a viewing and you weren't sure about the answer.



STEP
3

Activity – marketing and advertising scenarios

25
mins

This activity will challenge the group to apply their knowledge and on-the-job learnings to potentially tricky scenarios they may face.

Task: Read aloud each scenario or use the PowerPoint presentation to display each scenario and ask the group(s) to discuss their answers and write them down. Discuss all the responses as a whole after each scenario. Answers are provided below for you to explain to the group.

You can run this activity in one or more groups. Participants may need to refer to the Code of Conduct in this step.

Scenarios

1

Steve is the listing agent for a residential property that he recently appraised, and he provided the price range of \$650,000-\$750,000 to the vendor in writing. When talking to the vendor, they make it clear to Steve that they are looking for an amount over \$725,000. When creating advertising materials for the property, he advertises the property for sale by negotiation with enquiries over \$650,000 – the lower end of the price range that he provided to the vendor. Has Steve done anything wrong? If so, what would you suggest he does differently next time?

- A** By only listing the price at the lower end of the price range, below \$725,000, Steve is misrepresenting the vendor's price expectations, which breaches rule 9.4. It also misleads buyers whose budgets may be able to meet \$650,000 but are not aware that the vendors are expecting an offer to be at least over \$725,000.
-

2

Tamati recently listed an apartment for sale. The vendor told him it came with a storage unit, which Tamati was able to view, so he advertised the apartment as having a storage unit. Yu Yan bought the apartment, and when she tried to store her bike in the storage unit, the neighbour told her that she couldn't use it. The vendor had leased the storage unit to the neighbour for 2 years and not informed the neighbour they were selling the apartment. The neighbour claims he should still have use of the storage unit as the vendor never formally ended the lease agreement. Has Tamati breached any rules? If so, what should he have done differently?

A Tamati has breached rule 6.4 by providing false information and rule 5.1 for not acting with skill and care. Tamati should have checked the title, which would have noted there was a lease agreement registered on it. Tamati would have then been able to ask the vendor for more information and acquire a copy of the lease to disclose this to the buyer. Tamati should also then advise the buyer to seek legal advice about the lease going forward.

3

Lydia is marketing a property for lease that is currently set up as a small warehouse and packing facility in a commercially zoned area. Sakura has dreams of taking on the lease and turning the space into a small yoga studio. Sakura knows that she will need to make a lot of changes in order to transform the property, and Lydia verbally tells Sakura the client (lessor) would contribute to the cost of the renovations. What should Lydia do next to make sure Sakura could take on the lease with no problems or issues?

A Lydia should:

- advise Sakura to check with her local council that the property is zoned correctly for a yoga studio and, if so, whether it is possible to change its use
- speak with her client about how much they are willing to contribute to the costs of the renovation and follow up her verbal representation in writing to ensure Sakura has an accurate picture of her client's intentions.

4

Hone is inspecting a property in order to list it for sale. From what Hone can see when he visits, the property has four large bedrooms, each with a window, and it doesn't appear to have been renovated or had sections added to it. Hone advertises the property as a four-bedroom house, and it sells to a buyer who wants to use it as a rental property. After settlement, the buyer checks the LIM and finds out that one of the bedrooms is not consented. What steps could Hone have taken to reduce the risk of this issue occurring?

A Although in this case it was unlikely to be a strict requirement (as aspects of the property did not raise any questions or concerns), best practice suggests that Hone should have obtained a LIM. Licensees must take all reasonable steps to ensure they are providing factual information and going the extra mile in some cases can be worthwhile.

TIP! You can read more about disclosing building consents in advertising in case C19255 (see in particular paragraphs 36–39) in the decisions database at [rea.govt.nz/complaint-decisions](https://www.rea.govt.nz/complaint-decisions).

5

Mei Ling is listing a property for sale that is currently tenanted. She wants to photograph the property for marketing so she asks the tenants' permission, but they do not want her to photograph their possessions in the property. What should Mei Ling do?

A Mei Ling needs the tenants' permission to take photos of their personal possessions and publish photos in marketing material. To ensure personal possessions aren't shown, Mei Ling should try to work with the tenants to find a solution that meets everyone's needs. She could restrict photographs to being taken only at certain angles, ask the tenants to remove any possessions they don't want to be photographed and ensure no one can be identified from any photographs taken.

STEP 4

Activity – decide whether unsubstantiated representations have been made in advertising

15 mins

An unsubstantiated representation is a claim made in trade where the person, at the time they make the claim, doesn't have any reasonable basis for it. It can apply to all types of representations made by a licensee including statements used in marketing, on websites or verbally.

The key to avoiding unsubstantiated representations in real estate is to make sure you've seen evidence of something before you make a claim about it.

Puffery is where you make a claim that is clearly an exaggeration and that is so obvious that no-one

is likely to believe it is the truth. Puffery is sometimes risky to use as some statements are not so obvious to some, so it is hard for the average home buyer to know whether it is a fact or not.

Task: Read aloud or display using the PowerPoint presentation the descriptions of properties being advertised and decide as a group which parts can be classed as puffery and exaggeration and which parts are representations that people reading it would have a reasonable expectation of being correct.

Nominate someone in the group(s) to be the voice of

the buyer and consider how a first-home buyer or someone who hasn't bought for many years might interpret these descriptions. This task should encourage debate amongst the group. Use the debate and discussion as a way to demonstrate how disputes can arise if adverts aren't clear and puffery is heavily relied on.

There are some suggested answers below, but in this activity, try to agree on answers as a group based on the debate that is created. If the group decides that some representations are fact, ask what evidence or documents you would expect to see to be able to validate any claims made.

Property descriptions

1 One of the best buys on one of Takapuna's best streets!
We don't believe you will find a larger or sunnier home for sale in the heart of Takapuna than this family home. This spacious four-bedroom house is only minutes away from schools, shops, cafés and the beach!

A This headline and first line of the description are likely to be classed as puffery. A buyer can't reasonably expect licensees to be factual about which street is the best within in particular area – it's based on opinion and exaggeration. The advert does state that the property is "minutes away" from local amenities so there would be an expectation for this to be true for all amenities listed.

2 Idyllic retreat designed with no expense spared
This exquisite three-bedroom family home is any buyer's dream. The spacious double bedrooms maximise the mountain views with big picture windows. Enjoy waking up in the morning to magnificent alpine views.

A "No expense spared" would suggest high-quality finishes and top of the range products throughout the property, "double bedrooms" might suggest enough room to fit at least a double bed and other furniture comfortably. If a buyer doesn't think the property merits these representations, it could be classed as unsubstantiated.

3

The hottest property in Tauranga right now!

This property sets the standard for exceptional urban design at a price unmatched in the Tauranga property market. You'll love this property's contemporary urban feel, quality fittings and fixtures, generous living spaces and good natural light.

A The headline "the hottest property in Tauranga" is likely to be classed as puffery. This isn't something that can be evidenced and is an exaggeration that is unlikely to mislead a buyer. The rest of the description outlines features such as "generous living spaces and good natural light", which you would expect to be accurately represented.

4

Uninterrupted sea views

Relax and enjoy incredible unobstructed views across the Otago Harbour from the open-plan living and kitchen area as well as some of the lower-level rooms too. This bespoke architecturally designed home boasts outstanding contemporary design in both exterior and interior finishes.

A There is a reasonable expectation that the representation made about stunning and unobstructed sea views from all spaces listed in the description is accurate. It would be an unsubstantiated claim if there were buildings or foliage that blocked the view or if the view could only be seen from a certain vantage point, for example, the ensuite in the downstairs bedroom. "Architecturally designed" could suggest to a buyer that the property was designed by a prominent architect, even if it was only designed by someone who has all the necessary skills and knowledge to carry out the work, like an architectural designer. This could be cause for confusion for a buyer if they do not understand the difference between an architect and an architectural designer. It's important to verify who has carried out the work in order not to misrepresent the property.

Decision from the Tribunal

For more information about this case, search for case CA5330847 in the decisions database at [rea.govt.nz/complaint-decisions](https://www.rea.govt.nz/complaint-decisions).

In a related case, the Tribunal stated that neither a tertiary degree or registration with the New Zealand Registered Architects Board is a prerequisite to be able to be an architect for the purpose of advertising that a property is "architecturally designed", although the person must have the necessary skills or knowledge to be able to carry out the work of an architect, and even in that event, there could be a misleading element to that advertising. Licensees should be very careful in their advertising of "architecturally designed" properties, as this phrase could relate to various roles that undertake architecturally related work. The Tribunal caveated its decision above by stating that it would "expect a home described as 'architect-designed' to have been designed by a person registered with the New Zealand Registered Architects Board as a qualified architect. It is very disturbing that people who are no more than architectural designers or draughtspeople are being held out as prominent architects. This issue has been given quite some publicity over the past year or so and we expect real estate licensees to be aware of it and to be very careful in their representations about property designers."

5

The best time to invest is now!

If an investment of a different kind is on your mind, it doesn't get much better than this! You could earn rent 52 weeks of the year with this fabulous two-bedroom apartment, just a short distance from the University, public transport and heaps of local amenities!

A There is a reasonable expectation that the representation made about being able to earn a guaranteed income from this property is a fact. You would expect that the property either had guaranteed tenants or you would need to see tenancy records from previous years to prove it has made returns for the previous owner. It would be an unsubstantiated representation if, for example, there weren't appropriate consents for the property or if it needed work before you could attract tenants. The advert also states that the property is "just a short distance" from local amenities, so there would be an expectation for all amenities listed to be roughly within walking distance.

When you've finished talking through all the examples, explain to the group that:

- making unsubstantiated representations and false claims is not only against the Act and the Code of Conduct but also the Fair Trading Act 1986
- breaches of the Fair Trading Act 1986 carry penalties for licensees of up to \$200,000 and \$600,000 for agencies
- the Fair Trading Act 1986 allows some leeway with some statements that are exaggerations (puffery), but you need to be cautious because some statements are not so obvious for the average customer to understand whether they are fact or not
- **the rule of thumb is, if you're making a claim, you must have appropriate supporting evidence to back it up – any statement a licensee makes, whether verbally or in advertising, should be accurate, genuine and substantiated.**



STEP 5

Discuss the case study

20 mins

Case: C29353

For more information about this case, search the REA decisions database at rea.govt.nz/complaint-decisions using the case number above.

Task: Read aloud or display using the PowerPoint presentation the facts of case C29353 and the Complaints Assessment Committee (CAC) finding. Facilitate a discussion around how the licensee could have handled the situation better and what learnings the group might be able to take away from this case. There are suggested discussion questions provided.

Facts of the case

1. A property was advertised on a website that appeared in a potential buyer's search results when looking for properties priced up to \$700,000. Based on this information, an offer of \$760,000 was made on the property – a price well above the expectation indicated on the website.
2. The vendor countered this offer at \$895,000, which was a surprising increase in price to the potential buyer. They decided to revise their original offer to \$765,000 but this was also rejected. After this, the property continued to be advertised on the website at \$700,000.
3. The vendor's price expectation was actually a much higher price – between \$850,000 and \$950,000. This wasn't clear in the online marketing, and when the buyer questioned the licensee at the open home and when signing the agreement for sale and purchase, the licensee didn't suggest to the buyer that the vendor wouldn't accept the offer.
4. The licensee claimed that the price range online was originally set at the vendor's expected price range but that the website used an algorithm that set the minimum price \$100,000 lower than the price listed.
5. The vendor decided that the potential buyer had failed to realise what their lowest sale price was and chose to have no further dealings with them. The vendor was not aware that the potential buyer did not know of their expectations, believing that the licensee was operating on their instructions. For this reason, the potential buyer was denied any further opportunities to make an offer.

Suggested question to ask

- What do you think the outcome of the CAC process was?

CAC's finding

The CAC found that the licensee had engaged in unsatisfactory conduct under section 89(2)(b) of the Act. The licensee was also in breach of rules 5.1, 9.1, 9.4 and 10.4 of the Code of Conduct for:

- failing to act in their client's best interest
- failing to act in accordance with their client's instructions
- not advertising a property at a price that clearly reflects the pricing expectations agreed with the client
- misleading potential buyers.

The CAC concluded that it was the licensee who was ultimately responsible for the price range set on the website and that the licensee should have known that the website would list the property with a lower price range. By allowing the property to be advertised on the website at that price point, the licensee failed to act on the vendor's instructions.

The variance between the vendor's price expectations and the value indicated on the website was hugely misleading to potential buyers.

Penalty

The licensee was censured, fined \$1,500 and ordered to undertake further education and training relating to Unit Standard 23136 *Demonstrate knowledge of consumer protection law related to real estate practice.*

Discussion questions

- How could the licensee have handled the situation better?
- At what point do you think the licensee should have explained the vendor's expectations to the potential buyer?
- How often do you see this happening with sales in your area?
- What might you do differently as a result of hearing about this case?
- How do you think the buyer's experience reflects on the professionalism of the real estate industry?



Activity – complete the quiz



Read out the questions and discuss the answers either as one group or as a few smaller groups if there are a large number of participants. You decide how you want to play – you might want to use a timer or nominate participants from each team to go head to head! The more groups, the more competitive the participants may be!

Questions

- 1** **Q** True or false: A person with a salesperson's licence cannot describe themselves as a licensed real estate agent.
- A True.** A person with a salesperson's licence can describe themselves as a licensed salesperson or licensee but not as a licensed agent. They may refer to themselves as an 'agent' in a generic sense, for example, "I am the real estate agent selling this property."
- 2** **Q** What information must be displayed on any signage and advertising under section 121 of the Real Estate Agents Act 2008?
- A** If working for an agency, the name of the agency, the fact that the agency is licensed under the Act and the name the business is conducted under if it's different to the agency's name. An agent working as an independent agent is required to display their own name plus the fact that they are licensed under the Act. Examples:
- Fantastic Real Estate, licensed under the Real Estate Agents Act 2008
 - Jo Smith, Licensed REAA 2008
 - Bob Brady, Licensed REA Act 2008

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- 3** **Q** True or false: A licensee must stop advertising a property, in print and online, after it has been sold. **A True.** Agencies can leave a property in marketing materials as long as it clearly says that the property has sold. If the property does not sell and is withdrawn from the market, licensees must make sure that advertising is removed when the agency agreement ends. You risk breaching rule 9.6 if you leave advertising up on social media or your website after the agency agreement ends.
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- 4** **Q** When photographs are taken of a property, to what extent can they be edited? **A** You can't edit a photo to make a property look better if it will misrepresent it to a buyer, for example, Photoshopping grass into a concrete backyard. However, you can edit images to improve their ability to attract buyers, for example, brightening images and inserting blue sky if they were taken on a cloudy day.
-
- 5** **Q** Can licensees include information in advertising that is based on a vendor's claims? **A** Yes, as long as the claims have been verified with evidence. For example, if a building extension has created an extra bedroom, make sure the extension has the appropriate building consent before stating so in advertising. If you can't verify, REA recommends you do not make the claim.
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- 6** **Q** Should licensees disclose **all** known defects about a property in its advertising material? **A** It's not expected that everything about a property would be disclosed in online advertising or flyers at open homes, but it should be a correct representation of the property. If a potential buyer shows more interest in the property and is making a serious enquiry, you should make them aware of any issues that you know of.
-
- 7** **Q** Which of these specific conditions must be followed if you want to film or take photos of a property using a drone?
a. You must only fly the drone in daylight.
b. You cannot fly the drone higher than 120 metres above ground level.
c. You must have consent from anyone you are flying over.
d. You must have consent from the owner of any land you are flying over.
e. You cannot fly within 4km of an airport without agreement from the aerodrome operator.
f. All of the above. **A** All of the above.
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- 8** **Q** A vendor has converted his old garage in order to use it as a separate living space for his teenage children. He installed a small bathroom and insulated the walls and floors to make it a comfortable space to live in. He believes he can get more money in the sale of his property if it is advertised as having two separate and private living spaces. Can you advertise the property the way the vendor wishes to? **A** No, unless the garage conversion has the appropriate building consent. You would need to check with the vendor that the work has a Code Compliance Certificate - if not, you must disclose that the work is uncertified and should not advertise the property as having an extra lounge or bathroom as they are not consented.
-

9 **Q** Who is responsible for checking and proofing advertising before it is published?

A The listing licensee is ultimately responsible for any final printed or online advertising, even if it is prepared by someone else, for example, an office administrator. You may want to ask a senior salesperson or your supervisor to check it, but the responsibility lies with the listing licensee. Supervisors of newly licensed or inexperienced salespersons should take extra care and oversight when reviewing advertising.

10 **Q** Do licensees need permission to put up open home signs?

A You may put up signage on private property if you have the owner's permission. For public property like fences, poles or roadside berms, you should contact your local council before you put up any signage as there may be restrictions.



Where to go for more resources and information

5 mins

The REA website has important information and supporting resources to help guide licensees with marketing and advertising property. Visit rea.govt.nz/marketing for information about some of the topics that have been discussed today.

If you want to read previous CAC or Tribunal decisions that have dealt with marketing and advertising complaints, you can search the decisions database at rea.govt.nz/complaint-decisions.

For further support or general enquiries, you can call REA on 0800 367 732 or email info@rea.govt.nz.

Congratulations!

You've completed the marketing and advertising facilitated meeting pack! Remind participants to record this 2-hour training session in their non-verifiable training log.

