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April 26, 2013

Matthew Meisel, Esq.
Abrams Garfinkel Margolis Bergson, LLP
1420 Broadway, 17th Floor
New York, NY 10018

Dear Mr. Meisel:

I am in receipt of your electronic correspondence, transmitted on March 12, 2013, regarding the use of titles by licensed associate real estate brokers and real estate salespersons (referred to collectively as “agents.”) Specifically, you have asked if a brokerage may provide a title such as “President”, “Vice President”, “Senior Vice President”, “Executive Vice President” and “Managing Director” (“corporate titles”) to an agent for marketing purposes.

Section 441-c(1)(a) of the Real Property Law prohibits “dishonest or misleading advertising.” This phrase is not defined by statute or regulation. When interpreting the scope of a statute: “It is well settled that ..., a court [or administrative agency] should attempt to effectuate the intent of the Legislature (citation omitted), and “not sit in review of the discretion of the Legislature, or determine the expediency, wisdom or propriety of its action on matters within its powers” (citations omitted). The clearest indicator of legislative intent is the plain meaning of the statutory text (citation omitted). The words employed by the Legislature must be given their natural, ordinary and obvious meanings (citation omitted), and if the words of a statute have a definite meaning which involved no absurdity or contradiction, the court [or agency] has no right to add or take away from that meaning (citation omitted).” People v. Dorilas, 2008 WL 1902443 (N.Y.Sup.App.Term, April 21, 2008), 2008 N.Y. Slip Op. 28162 at 3.

Because “dishonest” and “misleading” are not statutorily defined, common meaning must be applied. “Dishonest” is defined as, “characterized by lack of truth, honesty, or trustworthiness.” (Merriam-Webster.com). “Mislead” is similarly defined as, “to lead astray” or “give a wrong impression.” (Id.) When business entities take official action, including electing or appointing officers, they are required to do so in accordance with the law. (*See*, for example, Business Corporation Law section 715). Use of a corporate title indicates that the entity has taken such action. If an agent advertises falsely that he or she holds a corporate title, it would be considered “dishonest” and “misleading” because doing so would lead the public to believe that the brokerage entity has appointed or elected the agent as an officer or to a comparable management position.

If a brokerage has taken action to officially appoint or elect an agent as a corporate officer, said action must comply with 19 NYCRR 175.22 which prohibits the ownership of voting stock by real estate salespersons. The regulation implements Real Property Law section 441-b(2) which proscribes that a real estate salesperson’s license shall not be issued to any officer of a licensed, corporate real estate broker, a manager or member of a limited liability company or to a member of a co-partnership

licensed as a real estate broker. Taken together, these provisions prohibit a real estate salesperson from holding voting stock or being appointed as an officer in a corporate brokerage, a manager or membership of a limited liability company or a member of a partnership.

Although the statute and regulation refer to “real estate salesperson,” they apply equally to associate brokers. Real Property Law section 440(2) defines an associate real estate broker as, “a licensed real estate broker who shall by choice elect to work under the name and supervision of another broker...” The statute also provides that while, “[S]uch individual shall retain his or her license as a real estate broker... the practice of real estate sales and brokerage by such individual as an associate broker shall be governed exclusively by the provisions of this article as they pertain to real estate salespersons.” Because the regulations found in Title 19 NYCRR Part 175 were enacted to implement the statutory requirements of Article 12-A of the Real Property Law, references to salesperson, such as that found in 19 NYCRR 175.22, include by extension associate brokers who, in accordance with Real Property Law section 440(2), have elected to work under another broker’s name and supervision.

I am therefore, of the opinion that brokerages may not provide corporate titles to agents for marketing or other purposes. Agents would similarly be prohibited from falsely advertising that they hold such a position within the brokerage.

Thank you for your inquiry.

Very truly yours,

Whitney A. Clark
Associate Attorney