REALTOR® Trademark

BY LAURIE JANIK

KNOW THE RULES

The National Association of REALTORS®' recent victory in defeating a legal challenge to the uniqueness of the REALTOR® trademark is a timely reminder of the need for continual care and vigilance in preserving this valuable asset. NAR's trademark protection efforts can be traced back almost to the first time the REALTOR® marks were used in 1915. Then, as now, the purpose of these efforts is to assure that the terms REALTOR® and REALTORS® are used only to identify members of NAR and aren't synonymous with generic terms, such as "real estate practitioner." The importance of this trademark program was demonstrated during the recent case, *Zimmerman v. NAR*, 2004, when the Trademark Trial and Appeal Board that decided it cited NAR's trademark protection efforts and members' observance of NAR's trademark rules as critical elements in its decision in NAR's favor.

At the heart of the association's trademark program is a comprehensive set of rules describing the proper use of the REALTOR® marks, which include the term and trademark symbol. The rules are organized around five limitations on the use of the marks, which apply to virtually all uses.

1. Membership limitation. Only individuals who hold the category of REALTOR® membership in a REALTOR® association are automatically licensed by NAR to use the REALTOR® marks to identify themselves. And to do so, they must follow NAR's rules, which allow the marks to be used in conjunction with, but not as part of, members' names and the name of their real estate businesses. A correct usage would be "John and Betty Smith, REALTORS®," while a usage such as "Your Professional Realtor" would be incorrect. The marks should be separated from the name of the member or the member's company name with appropriate punctuation, such as a slash, dash, or comma. Members may continue to use the REALTOR® marks for as long as they remain association members in good standing.

2. Real estate business limitation. Members are authorized to use the REALTOR® marks only in connection with their real estate businesses. Although members may be involved in other lines of business, their use of the REALTOR® marks is restricted to real estate brokerage and management, mortgage financing, appraising, land development, and building.

3. Context-of-use limitation. Perhaps the most difficult to understand, this limitation requires that the marks be used only to refer to a person's status as a member, not to an occupation. For this reason, uses such as "No. 1 REALTOR®," "Your REALTOR®," or "Professional REALTOR®" are incorrect. Such uses are improper because the REALTOR® marks are supposed to distinguish between members and nonmembers. They're not intended to promote one member over another.

A simple rule of thumb to use when trying to determine whether a particular use of the REALTOR® marks is proper under this limitation is to substitute the phrase "member of NAR" for the term "REALTOR®." If the meaning of the sentence doesn't change, you're probably using the term correctly. If the meaning changes, you'd need to substitute the words "real estate broker" or "real estate salesperson" in order to comply with correct trademark use. For example, a sentence such as "REALTORS® will benefit from the lower interest rates" is incorrect because all real estate brokers and salespeople, not just members of NAR, would benefit.

Another common context error is using descriptive words or phrases with the REALTOR® marks. NAR's bylaws expressly prohibit this practice. For example, "residential REALTOR®" is improper because "residential" is a descriptive word being used to modify the term REALTOR®. Geographic descriptive terms, such as the names of communities, cities, and states—for instance, Wisconsin REALTOR®—are also prohibited. Geographic descriptions may be used in the names of state and local REALTOR® associations, however.

4. Geographic limitation. Members are allowed to use the marks anywhere they go, but they must include the address of their place of business on materials in which the REALTOR® marks appear. This limitation applies to materials such as business cards, brochures, and Web sites.

5. Form-of-use limitation. REALTOR® marks must be used consistently and in ways that distinguish them from the words and symbols around them. The preferred format for REALTOR® is all uppercase letters, followed by the federal registration symbol (®). The term should never be used in all lowercase letters: realtor. In some special circumstances, such as newspaper articles, however, the marks may be used with only an initial capital letter—Realtors, for example—as long as the term refers to a member or members. Internet domain names and e-mail addresses also are treated as special exceptions. These options don't require the use of capitalization, punctuation, or the federal registration mark. Thus, a company named First National Realty, REALTORS®, could use the URL www.firstnationalrealtyrealtors.com. However, the company is subject to the other rules. For example, it couldn't use the domain name *bestrealtors.com* for the reasons described in No. 3.

By observing these rules and properly using the REALTOR® marks to identify your status as an NAR member, you'll help to assure that the REALTOR® marks always retain their special significance and the value they hold today.

Janik is the general counsel of the National Association of REALTORS®.

REALTOR®