



NATIONAL ASSOCIATION OF REALTORS®

*The Voice For Real Estate®*

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March 2, 2009

Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex S)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

**Re: Endorsement Guides Review, Project No. P034520  
NATIONAL ASSOCIATION OF REALTORS®**

To members of the Federal Trade Commission:

I am writing on behalf of the National Association of REALTORS® (NAR) in regards to the Federal Trade Commission's Proposed Revised Endorsement and Testimonial Guides (FTC Guidelines). NAR is a national trade association of over one million real estate professionals. Affiliated with NAR are 54 state and territorial and approximately 1400 local associations of REALTORS®. NAR and its constituent organizations may from time to time provide to their members information or communications about products and services that may be of interest or use to such members. NAR understands that the Commission is not proposing any substantive revisions to Section 255.4 regarding endorsements by organizations and NAR believes that information and communications it or its constituent organizations provide to members should not be deemed endorsements under the Guidelines. NAR nevertheless seeks clarification and confirmation in that regard, described more specifically below.

First, the Guidelines apply to any "advertising message" that consumers are likely to believe reflects the opinions, beliefs, finding, or experiences of a party other than the sponsoring advertiser (§ 255.0(b)), although the Guidelines do not provide an explicit definition of "advertising message." NAR seeks confirmation that a product review written by an employee of an organization does not qualify as an "advertising message" and therefore is not subject to the Guidelines. For this purpose, a "product review" means an objective, written evaluation of a product or service meant to inform the organization's members or other consumers about the availability, qualities, and features of particular product and services offered for sale, which does not also promote or encourage purchase of the products or services reviewed. The product review may contain positive statements, negative statements, or both about the product itself. NAR seeks confirmation from the FTC that such product reviews are not subject to the Guidelines.

Second, assuming such product reviews are not advertising messages subject to the Guidelines, please confirm that use of an organization's product review, or quotations from a product review, by a third party seller of such product in the third party's advertising message does not create "endorser"

liability for the organization when the organization did not consent to or otherwise participate in the third party's use of the product review. In the example offered with Section 255.4, a mattress seller advertises that its product is endorsed by a chiropractic association. If the association's "endorsement" were simply a favorable quotation from a product review (as defined above) written by an employee of the chiropractic association, and the chiropractic association did not consent to or otherwise participate in or benefit from such use of the product review, NAR believes the chiropractic association is not an "endorser" subject to the Guidelines. In addition, NAR understands the chiropractic association would not be subject to the endorser liability described in Section 255.1(d) or the expert endorsement requirements set forth in Section 255.3. NAR requests confirmation from the FTC of this understanding that, in such instance, the association would not qualify as an endorser under the Guidelines.

Last, Section 255.4 states that "an organization's endorsement must be reached by a process sufficient to ensure that the endorsement fairly reflects the collective judgment of the organization" (emphasis added). To the extent NAR or its constituents may ever elect to issue endorsements subject to the Guidelines, NAR urges clarification to more explicitly articulate the "process" that would lead to "reflect(ing) the collective judgment of the organization." We understand, but seek confirmation, that action by the organization's governing body, such as its Board of Directors, is not the kind of "collective judgment" required, and that an objective evaluation by a qualified and competent organization staff person, or group of staff members, is sufficient.

NAR and its constituents are among many organizations in the United States that may provide product information to their members that are not intended to endorse products or to appear in messages provided by sellers of products or services in advertising their products. NAR urges the Commission to assist every organization to which these requirements apply by providing the above-requested additional clarity and further explanation regarding Section 255.4 of the FTC Guidelines. Thank you for your time and consideration. If you have any questions, please do not hesitate to contact our Regulatory Policy Representative, Scott Rinn at (202) 383-7508 or [srinn@realtors.org](mailto:srinn@realtors.org).

Sincerely,

Charles McMillan, CIPS, GRI  
2009 President, National Association of REALTORS®.