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October 20, 2016

S. Anthony Gatto, Esq
General Counsel & Director of Legal Services
New York State Association of REALTORS®, Inc.
130 Washington Ave
Albany, NY 12210

Re: Executive Law § 296

Dear Anthony:

I am in receipt of your recent email wherein you ask whether the prohibitions against discriminatory practice in the sale or rental of “housing accommodations” contained in Executive Law §296(5)(a) apply to the actions of a real estate licensee in the sale or rental of his or her own home.

Executive Law §296(5)(a) provides that it is an “unlawful discriminatory practice” for a person, among other things, “[t]o refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons. . . to any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons.” However, such prohibitions do not extend to an owner in “the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such housing accommodations.” *Id.* This exemption has been judicially upheld rooted in the well-established “legal assumption that a man's house is regarded as his castle.” *Berback v Mangum*, 59 Misc 2d 41, 49 [Sup Ct 1969], *affd*, 33 AD2d 655 [4th Dept 1969](internal quotes omitted). In *Mangum*, a proceeding was commenced challenging a finding made by the New York State Division of Human Rights (“DHR”) against a homeowner for engaging in prohibited discriminatory conduct. *Id.* Upon review, Supreme Court, Monroe County annulled DHR’s findings, dismissed the complaint against the homeowner and issued an injunction against DHR from bringing further proceedings against the homeowners for “discrimination.” *Id.* See also, 18A N.Y. Jur. 2d Civil Rights § 141. It is thus a matter of law that a homeowner may decide with whom s/he shares their home and that such authority is not lost by virtue of such homeowner’s status as a real estate licensee. Notwithstanding that the Executive Law authorizes homeowners to make such choices, a licensee may not participate or assist in such pursuits on behalf of others. *See*, Exec. L. 296(5)(c).

I trust you will have found the above information helpful.

Very truly yours,

/s/

David Mossberg, Esq.
NYS Dept. of State



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of State**