

# **LEGAL UPDATE**

**JUNE 2015**

**PRESENTED BY:**

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**DIRECTOR OF LEGAL SERVICES**

# Legal Issues

- New Laws/Regulations
  - Mold evaluation and remediation
  - Carbon monoxide detectors in commercial buildings
- Court Decisions
  - Fair Housing, “Finders”, Commissions, Out of State
- DOS decisions
  - Misrepresentation, escrow, judgments
- Team structure etc...
- Broker rebates
- Advertising Update-Business Cards

## New Laws-Mold

- Mold assessment, abatement and remediation
- All will require licensure by 01/01/2016
- Only supply names of licensed mold professionals
- Until then, only supply names of reputable entities
- No more “One Stop Shop”
- NYS Dept of Health and NYS Dept of Labor outreach

## New Laws-Mold

- Exemptions for:
  - Homeowners doing own work
  - Les than 4 unit owner or employee doing work
  - Owner or managing agent or employee on commercial or more than 4 units so long as not offering to public

## New Laws-Mold

- Must hire mold assessment licensee to develop plan
- Must hire mold remediation or abatement licensee to follow plan
- Must hire mold assessment licensee to certify clean
- Failure of REALTOR to provide licensed mold assessment/remediation will result in liability

## New Laws-Mold

- Mold found during renovation...same procedure
  - Contractor must not remove or remediate
  - Contact mold assessor
  - Mold remediation licensee only party to remove
- Must hire mold assessment licensee to develop plan
- Must hire mold remediation or abatement licensee to follow plan
- Must hire mold assessment licensee to certify clean

# ▶ New Regulations-CO Commercial

- CO detectors in all commercial buildings
- Effective June 27<sup>th</sup>!!!! (in 9 days)
  - All new commercial construction with building permits issued after 12/31/2015
  - Must have central station, hard wired just like fire/smoke
  - Must install pursuant to regulations
  - Minor exceptions
  - If newly converted to mixed use after 12/31

# ▶ New Regulations-CO Commercial

- CO detectors in all commercial buildings
  - All pre-existing commercial buildings
  - Not required to have central station, hard wired just like fire/smoke
  - Can install 10 year sealed battery CO devices
  - No combination CO/fire/smoke
  - Must install pursuant to regulations



# Court Decisions

- Fair Housing
  - Rodriguez v. Village Green Realty et al
    - US Court of Appeals, 2<sup>nd</sup> Circuit, 6/2/2015
- Finders
  - DSA Realty v. Marcus & Millichap
    - Supreme Court NY, App Div, 3<sup>rd</sup> Dept, (5/26/2015)
  - Princeridge Group v. Oppidan, Inc.
    - US Court of Appeals, 2<sup>nd</sup> Circuit, 1/21/2015

# Court Decisions

- Commissions
  - Pinnacle Realty v. 255 Butler et al
    - Supreme Court NY, Kings County, 4/10/2013 (appealed)
    - Supreme Court NY, App Div, 2nd Dept, (2/25/2015)
  - Retail Advisors v. SLG 625 et al
    - Supreme Court NY, New York County, 2/23/2015
- Out of State Properties
  - Podlin v. Ghermezian et al
    - US Court of Appeals, 2nd Circuit, 1/19/2015

## DOS Decisions

- Canterino d/b/a Twins Realty
  - Agency, misrepresentation, unearned commission
- Dietz d/b/a Your NY Realty
  - failure to return escrow, failure to cooperate with DOS, failure to satisfy judgments
- Moxey and Kenneth Moxey Realty, Inc.
  - Failure to satisfy judgments, making false statement to DOS investigator

# Team structure

- Teams are not a licensed entity
- Teams are not permitted to conduct licensed activities
- Teams are prohibited from setting policy
- Teams are prohibited from having commission agreements
- Teams are prohibited from taking a listing
- All licensed related activities must be done by individual licensee, not team
- Broker must approve all team activities

## Team structure

- A team is not a 'mini-brokerage'
- Teams have no additional rights etc...
- LLC only for commissions, not conducting business

# Broker Rebates

- Licensee can offer anything of monetary value to a member of the public as an incentive to the consumer to utilize the services of the licensee
- Must be approved by broker
- Must be paid by broker
- Must be disclosed and appear on closing statement
- Money not required
  - Vacations, Televisions, Gift Cards,

# Advertising Update

- License type must appear on business cards
- Unintended omission from advertising regulation
- Amended regulation submitted: 19 NYCRR 175.25(d)(2) Business Cards. Notwithstanding subdivision (c) of this section, business cards must contain the business address of the licensee, **license type** and the name of the real estate broker or real estate brokerage with whom the associate real estate broker or real estate salesperson is associated. All business cards must also contain the office telephone number for the associate real estate broker, real estate salesperson or team.

# Free NYSAR Legal Hotline

**Monday – Friday**

**9:00am – 3:00pm**

**518-436-9727**

**518-43-NYSAR**



## NYSAR Radio-10:00am

- 7/7 Brokerage Dos, Don'ts and Best Practices
- 7/21 Agency Issues - Dual & Designated Agents
- 8/4 Antitrust
- 8/18 Responsibilities of a Listing Agent
- 9/8 Commission Issues
- 9/22 2015 NYSAR Fall Business Meetings: Preview
- 10/13 Environmental Issues

**If you are unable to listen live, all broadcasts are available for download as a podcast on [NYSAR.com](http://NYSAR.com)**

# 2015 Legal Webinars

**10/15            Legal Update**

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## NYSAR.com

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