

LEGAL UPDATE



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Legal Issues

- Court/DOS decisions of interest
- Regulatory Update
- Points towards brokers license
- Service animals
- Senior Housing
- Buyer-broker agreements and designated agency
- Raffles/Contests

Court/DOS Decisions

- **Court Decisions**

- Commercial Tenant v Northern Leasing (9/29) 1st Dept
- DSA Realty v Marcus & Millichap (5/16) 1st Dept
- Sholom & Zuckerbolt Realty v Gallant (7/22) 2nd Dept.
- Delibero v Duloc (8/31/15) Sup Ct. NY County

- **DOS Decisions**

- DOS v Tassone, 337 DOS 15
- DOS v Raghubar, 365 DOS 15
- DOS v Shiamili, 374 DOS 15
- DOS v Karpen, 376 DOS 15

Regulatory Update

19 NYCRR § 175.12 Delivering **[duplicate original]** copy of instrument

A real estate broker shall immediately deliver a **[duplicate original]** copy of any instrument to any party or parties executing the same, where such instrument has been prepared by such broker or under his supervision and where such instrument relates to the employment of the broker or to any matters pertaining to the consummation of a lease, or the purchase, sale or exchange of real property or any other type of real estate transaction in which he may participate as a broker.

Regulatory Update

19 NYCRR § 175.20 Branch Offices

(b) Every branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership holding such license. [A salesperson licensed as such for a period of not less than two years and who has successfully completed a course of study in real estate approved by the Secretary of State, may be permitted to operate such a branch office only under the direct supervision of the broker provided the names of such salesperson and supervising broker shall have been filed and recorded in the division of licenses of the Department of State.]

[(c) Supervision of such a licensed salesperson shall in addition to the requirements of section 175.21(a) of this Part, include guidance, oversight, management, orientation, instruction and supervision in the management and operation of the branch office and the business or real estate broker conducted therein.]

Regulatory Update

19 NYCRR § 175.24 Exclusive Listings-Residential Property

(a) [Residential property as used in this section shall not include condominiums or cooperatives but shall be limited to one, two or three family dwellings.] **Residential real property as used in this section shall mean real property used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons improved by (i) a one-to-four family dwelling or (ii) condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed.**

Regulatory Update

19 NYCRR § 177.2 Approved Entities

Continuing education real estate courses and offerings may be given by...public or private vocational schools; real estate boards; and real estate-related professional societies and organizations. *Courses, including sales or technology, that increase the competency of the licensee as it relates to the real estate transaction shall be acceptable as meeting continuing education requirements subject to the restrictions set forth in paragraph (d) of this section.* ...The following types of instruction shall not be acceptable as meeting continuing education requirements:

(d) subjects that are not real estate related.

Regulatory Update

19 NYCRR § 179.1 Qualifying Experience

An applicant for licensure as a real estate broker must possess **[one]** **two** years of full time experience as a licensed real estate salesperson under the supervision of a licensed real estate broker or the equivalent full-time experience in general real estate business for a period of at least **[two]** **three** years.

Regulatory Update

19 NYCRR § 179.2 Point System

- (b) [1750] 3500 points shall equate to [a] two years of full time experience.

Brokers License Point Value

- DOS Letter 4/14/2008
- May the listing agent claim 10 points for taking the listing and 250 points when it sells?
 - Exclusive agreement-10 pts to listing agent
 - If listing agent brings buyer-250 points
 - If cooperating broker brings buyer-0 points

Service Animals

- A reasonable request for accommodation must meet the following criteria:
 1. Does the person seeking to use and live with the animal have a disability — i.e., a physical or mental impairment that substantially limits one or more major life activities?
 2. Does the person making the request have a disability-related need for an assistance animal? In other words, does the animal work, provide assistance, perform tasks or services for the benefit of a person with a disability, or provide emotional support that alleviates one or more of the identified symptoms or effects of a person's existing disability?

Service Animals

- A service animal is not a pet
- Landlord is prohibited from:
 - Denying a tenant because of a service animal
 - Charging more rent for service animal
 - Charging a 'pet fee' for service animal
 - Treating tenant any differently except permitting service animal

Service Animals

- Landlord prohibited from denying request because unable to determine a disability.
- Landlord may ask for documentation from a reliable source if the disability is not apparent.
- If the disability is apparent, landlord can ask if the connection between the disability and the need for the identified service animal is not apparent.
- HUD provided examples of what could constitute proper documentation of a disability including a letter from a physician, social worker, psychologist, or “other mental health professional”

Service Animals

- Determination on whether to grant an accommodation request for a service animal needs to be made by the landlord and not the licensee.
- While the licensee could request documentation from the applicant in support of the accommodation request, this information should always be gathered at the direction of the landlord.
- Licensees should always make it clear to the applicant that the request is being made by the landlord, not the licensee.
- If you know request is not permitted, not protected.

Senior Housing

- Fair Housing Act exempts some senior housing facilities/communities from liability for familial status discrimination.
- Exempt senior housing facilities or communities can lawfully refuse to sell or rent dwellings to families with minor children.

Senior Housing

- In order to qualify for the “housing for older persons” exemption, a facility or community must prove that its housing is:
 - Provided under any State or Federal program that HUD has determined to be specifically designed and operated to assist elderly persons (as defined in the State or Federal program); or
 - Intended for, and solely occupied by persons 62 years of age or older; or
 - Intended and operated for occupancy by persons 55 years of age or older.

Senior Housing

- The Fair Housing Act (1989) and HOPA (Housing for Older Persons Act 1995) provides an exemption when advertising "Adult 55+/62+ Community."
- To qualify for the exemption, notice must be provided to the public, including other licensees, that the property being advertised meets the guidelines for "Adult 55+/62+ Community."

Senior Housing

- Two age groups qualify for exemption:
 1. Housing occupied 100% by persons at least sixty-two (62).
 2. Housing occupied by at least one person at least fifty-five (55) per unit in at least 80% of the units.
- Licensees that fail to correctly advertise the listing jeopardizes the claim that it qualifies for "Adult 55+/62+ Community" and fails to qualify for the exemption.

Senior Housing

- HUD guidelines permit publishers (print media or MLS) to accept advertisements referring to qualified "Adult 55+/62+ Community," and not be held liable.

The following terms are permitted for such housing:

Senior Housing

Adult 55+

Adult 62+

Retirement Housing

Retirement Community

Housing for Older Persons

Adult Community, 55 and over

Adult Community, 62 and over

Senior Community

Senior Housing

- Other wording used referring to persons 55 or 62 are permitted (stay within spirit of approved wording)
- Less is not more as the term “Adult” is not sufficient by itself but “Adult 55+” or “Adult 62+” may be acceptable.
- Advertisements must reference 55/62 age limitations when describing “Housing for Older Persons.”

Buyer/Broker Agreement

- Seller signs listing agreement and becomes client
- LA calls for commission of X% w/cooperating comp
- Seller agrees to Advanced Consent to Dual and Designated Agency

Buyer/Broker Agreement

- Buyer signs “Exclusive Right to Represent/Buyer-Broker Agreement”
- ERR/BBA calls for commission of X% to Buyer’s Agent or difference w/cooperating compensation from LA
- Buyer agrees to Advanced Consent to Dual and Designated Agency

Buyer/Broker Agreement

- Buyer wants to view in-house listing
- Designated agency now in effect
- Buyer wants to purchase property

Buyer/Broker Agreement

- When submitting offer, Designated Agent for the Buyer includes additional compensation called for under the ERR/BBA.
- NOW THE BROKERAGE HAS A PROBLEM

Buyer/Broker Agreement

- Issue 1: The Buyer's Agent is no longer a Buyer's Agent when Designated Agency is implemented so the commission agreed to in the ERR/BBA is no longer applicable.
- **DESIGNATED AGENCY IS NOT BUYER'S AGENCY**
- Issue 2: Seller already signed a listing agreement to pay broker X%, not X% plus additional amount
- Issue 3: It is highly likely that DOS would take issue with this practice

Buyer/Broker Agreement

- Modification of ERR/BBA to include Designated Agency still not permitted as to requesting additional funds from the Seller.
- Any brokerage involved in such practices are doing so at their own risk.
- Discipline form DOS may include refund of all commissions plus statutory 9% interest.

Raffles

- General Municipal Law (“GML”), Section 186.3-b, defines raffles as “...those games of chance in which a participant pays money in return for a ticket or other receipt and in which a prize is awarded on the basis of a winning number or numbers, color or colors, or symbol or symbols designated on the ticket or receipt, determined by chance as the result of a drawing from among those tickets or receipts previously sold.”

Raffles

- As a general rule, a not-for-profit organization that is tax exempt and which is established to provide a benefit to others may conduct a raffle.
- Charitable, educational, fraternal, service, veterans' and volunteer firefighter organizations are organizations authorized to conduct raffles.
- Real Estate Brokerages and their associated licensees are prohibited from conducting raffles.
- Local board/association should consult with their own legal counsel as to whether you may hold a raffle and how to comply with the requirements.
- 50/50 and "rip offs" are raffles
- **NEVER HOLD AN RPAC RAFFLE!!!!!!**

Raffles

- Homeowners are unable to raffle property off
- Licensees prohibited from holding raffle funded by numerous sellers offered to purchasers of property (Atty Gen Opinion 96-F1)

Contests

General Business Law (GBL) § 369-e

Every person, firm or corporation proposing to engage in any game, contest or other promotion or advertising scheme or plan in connection with the promotion, advertising or sale of consumer products or services which offers the opportunity to receive gifts, prizes or gratuities, as determined by chance, without any consideration therefor, where the total announced value of the prizes offered is in excess of five thousand dollars shall file with the secretary of state a statement... Failure to file such statement shall be a class B misdemeanor.

Contests

- The statement must set forth:
- the minimum number of participating objects to be made available;
- the minimum number of prize-winning objects that will be included in such promotion or advertising scheme or plan;
- the proportionate opportunity of winning prizes;
- the minimum value of prizes to be made available; and
- the rules and regulations pertaining to such promotion or advertising scheme or plan, which shall include the period of time and the geographic area to be covered by the contest.

Contests

- § 132.2 Registration statement

In addition to the information required by General Business Law section 369-e(1), the statement filed in the Department of State shall set forth the prizes offered and the retail value of each prize.

- § 132.3 Value of prizes

The actual retail cost shall be used in determining the value of prizes offered in any game of chance.

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