

Brokers acting as a landlord's agent may continue to collect commissions from tenant's agents until further notice.

On Monday, February 10, 2020, the Supreme Court, Albany County, issued a Temporary Restraining Order (TRO) prohibiting the Department of State from pursuing any disciplinary action against a brokerage acting as a landlord's agent and collecting their commission directly from the tenant. The DOS is required to submit their paperwork to the court by March 13, 2020.

The TRO is a direct result of legal action taken by NYSAR and REBNY against a Department of State (DOS) guidance document published on February 4, 2020 clarifying what activities a broker, and its associated licensees, may be disciplined for under the Tenant Protection Act (TPA).

In the guidance document, the DOS stated that a brokerage acting as landlord's agent is prohibited from collecting a commission directly from the tenant as that would be a violation of the TPA. This would have had a significant impact on the custom and practice of residential rentals throughout New York.

Until such time as the court rules otherwise, a broker representing a landlord as a landlord's agent may continue to collect commissions directly from the tenant without fear of discipline by the DOS.

NYSAR will notify all members through email if there are any changes to the TRO.

Any questions about other provisions of the guidance document may be directed to NYSAR's Legal Hotline. The Legal Hotline is available Monday-Friday from 9:00am-4:00pm excluding holidays.

The Legal Hotline has received over 1,200 inquiries as to the landlord's agent commission issue and this notification should answer many of the caller's inquiries. Due to the high volume of calls and voicemails received, NYSAR is requesting those members that called and left a voicemail on a different topic to call the hotline again to have their question answered. It may be some time before NYSAR will be able to return all of the voicemails received on or after February 10, 2020.