

FREE LEGAL FREE UPDATE

JANUARY 19 » 10 A.M. - 11 A.M.



nysar

*Approved for CE credit on recent legal matters and is instructed by an attorney.





FREE LEGAL UPDATE COURSE



Approved for continuing education (CE) credit on recent legal matters and is instructed by an attorney.

2021 DATES:

January 19

February 17

March 11

April 14

May 4

June 28

July 26

August 16

September 13

October 20

November 18

December 14

Welcome!!!

- Welcome to the first NYSAR Free Legal update
- 1 credit of CE under “legal updates” for registrants
- Monthly updates will be the same unless something new arises

Welcome!!!

- Members may take for CE credit once every license renewal cycle
- Update will be recorded and livestreamed for those not seeking CE
- Information will be disseminated through other courses as well

2021 Schedule



FREE LEGAL UPDATE COURSE



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IS NY STILL UNDER A STATE OF EMERGENCY?

When Will the State of Emergency Expire?

- The current State of Emergency (SoE) is extended until 1/26/2021
- SoE needed to keep restrictions in place
- Without SoE everything will be as it was before March 2020

When Will the State of Emergency Expire?

- Extensions highly likely to continue as COVID-19 is still a public health risk
- Vaccination roll out and population vaccinated will have greatest impact on extensions

When Will the State of Emergency Expire?

All guidance
under Phase 2
still in effect

When Will the State of Emergency Expire?

There has been
no “relaxation”
of the guidance

When Will the State of Emergency Expire?

- NO COLD CALLS
- The law is not industry specific and is triggered statutorily by the SoE
- Only when the SoE is lifted will cold calling be permitted

General Business Law §399-z(5-a)

“It shall be unlawful for any telemarketer doing business in this state to knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law.”

General Business Law §399-z(1)

- h. “Telemarketer” means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer. For the purposes of this section, “commercial purposes” shall mean the **sale or offer for sale of goods or services**;
- j. “Telemarketing sales call” means a **telephone call made by a telemarketer** or by any outbound telephone calling technology that delivers a prerecorded message **to a customer or to a customer's voicemail or answering machine service for the purpose of inducing payment or the exchange of any other consideration for any goods or services**;

State of Emergency & NYSAR

- Legal Hotline calls have more than doubled
- NYSAR in regular contact with various NYS agencies

State of Emergency & NYSAR

- Members utilize NYSAR COVID resources (videos, articles, FAQ's)
- NYSAR provided forms distributed to local boards and brokers:
 - COVID-19 Disclosure Form
 - Health and Travel Screening Questionnaire

State of Emergency & NYSAR

- Thank you to NYSAR members that followed and continue to follow the guidance from ESD and DOH
- Due to your diligence, NYSAR has been able to show Realtors are responsible

State of Emergency & NYSAR

- NYSAR has advocated that in the event of another shutdown (pre-phase 2 or red zone) that in-person real estate activity continue with PPE
- NYSAR is unaware of any COVID related exposures in real estate using PPE

State of Emergency & NYSAR

For up to date information on real estate matters related to COVID-19, please go to:

<https://nysarcovidupdates.com/>

NEW DISCLOSURE FOR RENTALS

NYS Exec Law §296-Amended

- Amends Exec Law §296 (Human Rights Law)
- Effective March 2, 2021
- Only applies to “housing accommodations”
- Includes publicly assisted (2-a) and private housing (18-a)
- Regulations from DHR have not been published yet
- Some issues are still pending

NYS Exec Law §296(18-a)

Every owner, lessee, sub-lessee, assignee, or **managing agent** of, or other person having the right of ownership of or possession of or the **right to rent or lease housing accommodations** shall disclose to all tenants and prospective tenants of their right to request reasonable modifications and accommodations if they have a disability pursuant to subdivision eighteen of this section.

NYS Exec Law §296(18-a)

Such disclosure shall be made in writing in such form and manner as the division may by regulation prescribe and provided to **all current tenants within thirty days of the beginning of their tenancy, or thirty days from the effective date of this subdivision for current tenants.**

NYS Exec Law §296(18-a)

Such disclosure shall also be conspicuously posted in such form and manner as the division may by regulation prescribe on every vacant housing accommodation that is available for rent.

NYS Exec Law §296-Amended

- Requires disclosure to all current and potential tenants of right to reasonable accommodation for disability
- Disclosure form to be developed by DHR
- This is a different form than the Housing and Antidiscrimination Disclosure Form and Notice

NYS Exec Law §296-Amended

- “...disclose to all tenants and prospective tenants of their right to request reasonable modifications and accommodations if they have a disability...”
- “If they have a disability” does not mean the disclosure is only required if the tenant/potential tenant has a disability

NYS Exec Law §296-Amended

- Disclosure must be in writing
 - NYSAR is of the opinion electronic delivery will be permitted. This still qualifies as “in writing”
 - Method of electronic delivery and/or acknowledgement of disclosure is still unknown

NYS Exec Law §296-Amended

- Licensees required to provide form at first substantive contact
- What is “first substantive contact”

First Substantive Contact

- No “bright line” definition
- Historically warm body approach
- Open houses
- Telephone contact
- Email, internet, etc.

Substantive Contact

- Warm body approach not only method
- Phone, internet, fax, email other electronic communication mediums currently in use of to be developed

NYS Exec Law §296-Amended

- What if I have a client/customer already but potential tenant has not signed a lease prior to 3/2/2021?
 - Provide the client/customer with the disclosure form the next time you have contact

NYS Exec Law §296-Amended

- Required to be given to current Tenant that has not yet occupied “housing accommodation” within 30 days of the beginning of tenancy
 - Tenant already has signed lease but has not taken occupancy as of effective date of law (3/2/2021)

NYS Exec Law §296-Amended

- Current tenants within 30 days of effective date
 - No later than April 1, 2021
 - All tenants currently occupying leased “housing accommodations”

NYS Exec Law §296-Amended

- Disclosure must be posted in every vacant housing unit available for rent
 - To be developed by DHR
 - In addition to required “Housing and Anti-Discrimination Notice”

NYS Exec Law §296-Amended

- Applies to:
 - Owner
 - Lessee/Sub-Lessee
 - Assignee
 - Managing Agent
 - Real estate licensees (other person having right of ownership, possession or the right to rent)

NYS Exec Law §296-Amended

- As a best practice, licensee should provide form for every tenant if they are within 30 days of desired move in date
- Landlord must retain form for 3 years

NYS Exec Law §296-Amended

- NYSAR will notify members when the disclosure form and notice have been published by DHR

MANDATORY CE REQUIREMENT EFFECTIVE 7/1/2021

Continuing Education

- Currently, non-exempt licensees must complete 22 ½ hours of CE every 2 years
- Included in the 22 ½ hours are 3 hours of Fair Housing and 1 hour of Agency (unless 1st renewal, then 2 hours of Agency)
- Brokers licensed for 15 consecutive years prior to 7/1/2008 are currently exempt from CE

Continuing Education

- During the Fall 2018 NYSAR business meetings, multiple committees approved proposed legislation to increase the “core” requirements of CE
- The same committees also supported the elimination of the grandfathering clause
- It was NYSAR’s opinion that every licensee needs to take CE and no other licensed profession has a grandfathering exemption

Continuing Education

- NYSAR drafted proposed amendments to the Real Property Law
- Proposed amendments were introduced before the legislature
- Passed Assembly on 5/30/19, passed Senate on 6/20/19
- Delivered to Governor on 10/11/2019

Continuing Education

- Governor Cuomo signed into law on 10/23 to:
 - Include 2.5 hours of ethical business practices
 - Include 1 hour of legal updates
 - This is part of the total 22.5 hours required
 - Fair Housing and Agency are still required
 - Eliminate the “grandfathering exemption” for all licensees

Continuing Education Removed Text

~~The provisions of this paragraph shall not apply to any licensed real estate broker who is engaged full time in the real estate business and who has been licensed under this article prior to July first, two thousand eight for at least fifteen consecutive years immediately preceding such renewal.~~

Continuing Education RPL 441(3)(a)

3 hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property, at least 2 ½ hours of instruction pertaining to ethical business practices, at least 1 hour of instruction pertaining to recent legal matters governing the practice of real estate brokers and salespersons in New York which may include statutes, laws, regulations, rules, codes, department of state opinions and decisions, and court decisions and at least 1 hour of instruction pertaining to the law of agency except in the case of the initial 2-year licensing term for real estate salespersons, 2 hours of agency related instruction must be completed

Continuing Education

- Changes would not go into effect until 7/1/2021
- Every single licensee currently grandfathered would be required to complete 22.5 hours of CE
- No exemptions means no exceptions (except for attorneys)
- NYSAR and local Realtor boards/associations will most likely offer the 2 ½ hours of ethical business practices that will also satisfy the NAR requirement

COMPLYING WITH ADVERTISING ON SOCIAL MEDIA PLATFORMS WITH LIMITED CHARACTERS

Advertising on Social Media

- Make every attempt to comply on social media site
- If there is room to comply you should
- Alternatives are only permitted if “traditional” compliance is impossible

Advertising on Social Media

- John Smith, a licensed real estate salesperson, uses a mobile app to advertise an exclusive listing. The app limits how many characters may be sent in each advertisement
 - Mr. Smith could have complied with the regulation by “threading” his advertisements and necessary disclosures to make clear that multiple successive messages that exceed the character limitations actually act as one advertisement.

Advertising on Social Media

- John Smith, a licensed real estate salesperson, uses a mobile app to advertise an exclusive listing. The app limits how many characters may be sent in each advertisement
 - As an alternative, the Department would permit Mr. Smith to provide a clear, conspicuous and unambiguous link within the same advertisement to a separate page where all the required disclosures are made. For a link to be acceptable, it must clearly and conspicuously disclose the link's purpose and cannot simply state “click here for more information”.

REGULATIONS HOUSING DISCRIMINATION

Fair Housing Regulations

- 19 NYCRR 175.28 Disclosure of Fair Housing Laws
- 19 NYCRR 175.29 Posting of Fair Housing Laws
- 19 NYCRR 177.9 Recording of Fair Housing Instruction

19 NYCRR 175.28 Disclosure

(a) A real estate broker shall be responsible to ensure that each individual licensed pursuant to Article 12-A of the New York Real Property Law and associated with such broker provides to a prospective purchaser, tenant, seller, or landlord upon first substantive contact a disclosure notice

19 NYCRR 175.28 Disclosure

(b) The disclosure notice required pursuant to paragraph (a) of this section, may be provided...by any of the following means: email, text, electronic messaging system, facsimile, or hardcopy. An electronic communication containing a link to the disclosure notice...shall be permissible, provided the communication also contains text...that the link contains information regarding the New York State Human Rights Law.

19 NYCRR 175.28 Disclosure

(c) The disclosure notice...may be provided...by any of the following means: email, text, electronic messaging system, facsimile, or hardcopy. An electronic communication containing a link to the disclosure notice...shall be permissible, provided the communication also contains text...that the link contains information regarding the New York State Human Rights Law.

Acknowledgement and document retention

Hardcopy:

obtain a signed acknowledgment from the prospective buyer, tenant, seller, or landlord. Such signed disclosure notice shall be retained for not less than three years.

Acknowledgement and document retention

Electronic means:

if by email, text, electronic messaging system, or facsimile, a duplicate copy must be retained for not less than three years.

Acknowledgement and document retention

Refusal to sign: (same as agency)

If consumer declines to sign the licensee shall set forth under oath or affirmation a written declaration of the facts regarding when such notice was provided and shall maintain a copy of the declaration for not less than three years.

Broker Liability 175.28(e)

A real estate broker shall be jointly liable for any violation of this section committed by any licensed individual associated with such broker.*

*Brokers are already liable, including it doesn't increase liability

19 NYCRR 175.29(a) Posting of FH Laws

A real estate broker shall display and maintain at every office and branch office operated by such broker a notice, furnished by the Department, indicating the substantive provisions of the New York State Human Rights Law relative to housing accommodations. The notice shall set forth how Human Rights Law complaints may be filed and such other information as the Department deems pertinent.

19 NYCRR 175.29(b) Posting of FH Laws

- The notice required by paragraph (a) of this section shall be:
 1. prominently displayed in the window of such office and any branch office maintained by such broker if such broker also provides listings or other postings in the window of such location and must be visible to persons on that portion of the sidewalk adjacent to such office or branch office.

19 NYCRR 175.29(b) Posting of FH Laws

- The notice required by paragraph (a) of this section shall be:
 2. If any office or branch office is not accessible from the sidewalk or if postings are otherwise prohibited by any other applicable law, then the notice required pursuant to paragraph (a) of this section shall be prominently posted in the same location the business license is posted pursuant to subdivision 3 of section 441-a of article 12 of the Real Property Law.

19 NYCRR 175.29(c) Posting of FH Laws

All websites created and maintained by real estate brokers, associate real estate brokers, real estate salespersons and any real estate team, as such term is defined by section 175.25 of this title, shall prominently and conspicuously display on the homepage of such website a link to the Department's notice as required by paragraph (a) of this section, which shall be made available by the Department.

19 NYCRR 175.29(d) Posting of FH Laws

A real estate broker, licensed real estate salesperson, or licensed associate broker shall have displayed at all open houses of all real property the notice required by paragraph (a) of this section. In addition, a real estate broker, licensed real estate agent, or licensed associate broker shall have available at all open houses and showings of all real property the notice required by paragraph (a) of section 175.28 of this part.

19 NYCRR 175.29(e) Posting of FH Laws

A real estate broker shall be jointly liable for any violation of this section committed by any licensed individual associated with such broker.*

*Brokers are already liable, including it doesn't increase liability

19 NYCRR 177.29(a) Recording of FH Instruction

Every entity approved to provide instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property shall cause a recording to be created of each course in its entirety. Such recording shall contain both video and audio of the instruction.*

*NYSAR will be advocating for audio or video

19 NYCRR 177.29(b) Recording of FH Instruction

The recording required by paragraph (a) of this section shall be maintained by the approved entity for at least one year following the date such course was provided to an enrolled student. If the entity knows or suspects that the recording is or will be the subject of litigation, then the approved entity shall maintain such recording as required by law.

19 NYCRR 177.29(c) Recording of FH Instruction

The recording required by paragraph (a) of this section may be subject to audit by the Department pursuant to section 177.11 of this part.

19 NYCRR 177.11 Auditing

A duly authorized designee of the department may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

Legal Hotline
Monday-Friday
9:00a.m.-4:00p.m.
518-436-9727