

New NYSAR Member Benefit



Welcome!!!

- 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

Future Dates

~~April 14~~

June 28

August 16

October 20

December 14

May 4

July 26

September 13

November 18

Register

- You must be logged in to NYSAR .com to register
- Under “Education” choose “NYSAR Course Schedule”
- Classes are on the calendar
- Choose “Education” and “NYSAR Legal Update CE Course” for more information

IS NY STILL UNDER A STATE OF EMERGENCY?

When Will the State of Emergency Expire?

- The current State of Emergency (SoE) is extended until March 24, 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?

- NYSAR is unaware of any possible modifications under Phase 2 due to any new gathering guidelines.

When Will the State of Emergency Expire?

- Legislation curbing the Governor's powers under a State of Emergency do not impact current Executive Orders

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**;

What about door to door marketing?

- It is NYSAR opinion that unsolicited door to door activity is contrary to the Phase 2 guidance
- There are no provisions in the Phase 2 guidance permitting such activity
- This includes “flyers” and hang tags

What about door to door marketing?

- Governor Cuomo announced domestic travelers who have been fully vaccinated will no longer be required to quarantine or be tested upon arrival in the 90 days following their full vaccination
- NYS COVID-19 travel advisory has yet to be updated with this information

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 our members 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” rentals
- Includes publicly assisted (2-b) and private housing (18-a)
- Regulations from DHR have not been published yet
- Some issues are still pending

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(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)

- ...shall disclose to all tenants and **PROSPECTIVE** tenants
- ...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
- Where is the trigger for prospective 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 prospective tenants of right to reasonable accommodation for disability
- Sample disclosure form/notice developed by DHR
- This is a different form than the Housing and Antidiscrimination Disclosure Form and Notice

NYS Exec Law §296-Amended

- DHR has provided a sample notice/disclosure
- There may be local laws that provide greater accommodations to an individual that qualifies
- Some public housing may have other requirements
- Landlords need to discuss with their legal counsel

<https://dhr.ny.gov/requirednotice>

Required Notice by Housing Providers of Tenants' Rights to Reasonable Accommodations for Persons with Disabilities

On December 2, 2020, Chapter 311 of the laws of 2020 was signed into law, requiring housing providers to “disclose to all tenants and prospective tenants of their right to request reasonable modifications and accommodations if they have a disability . . .”. The full legal requirements can be found at Human Rights Law § 296.2-b and § 296.18-a. These provisions are effective March 2, 2021.

Every housing provider covered under Human Rights Law § 296.2-b and § 296.18-a must make the required disclosure to all tenants and perspective tenants in writing within thirty days of the beginning of their tenancy, or thirty days from the effective date of this provision for current tenants.

The following is a sample of notice language that complies with the new provisions in Human Rights Law § 296.2-b and § 296.18-a. Any other notice used by a housing provider must comply with the requirements of the law.

Sample Form

NOTICE DISCLOSING TENANTS' RIGHTS TO REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Reasonable Accommodations

The New York State Human Rights Law requires housing providers to make reasonable accommodations or modifications to a building or living space to meet the needs of people with disabilities. For example, if you have a physical, mental, or medical impairment, you can ask your housing provider to make the common areas of your building accessible, or to change certain policies to meet your needs.

To request a reasonable accommodation, you should contact your property manager by calling _____ or _____, or by e-mailing _____. You will need to show your housing provider that you have a disability or health problem that interferes with your use of housing, and that your request for accommodation may be necessary to provide you equal access and opportunity to use and enjoy your housing or the amenities and services normally offered by your housing provider.

If you believe that you have been denied a reasonable accommodation for your disability, or that you were denied housing or retaliated against because you requested a reasonable accommodation, you can file a complaint with the New York State Division of Human Rights as described at the end of this notice.

Sample Form

Specifically, if you have a physical, mental, or medical impairment, you can request:

Permission to change the interior of your housing unit to make it accessible (however, you are required to pay for these modifications, and in the case of a rental your housing provider may require that you restore the unit to its original condition when you move out);

Changes to your housing provider's rules, policies, practices, or services;

Changes to common areas of the building so you have an equal opportunity to use the building. The New York State Human Rights Law requires housing providers to pay for reasonable modifications to common use areas.

Sample Form

Examples of reasonable modifications and accommodations that may be requested under the New York State Human Rights Law include:

If you have a mobility impairment, your housing provider may be required to provide you with a ramp or other reasonable means to permit you to enter and exit the building.

If your doctor provides documentation that having an animal will assist with your disability, you should be permitted to have the animal in your home despite a “no pet” rule.

If you need grab bars in your bathroom, you can request permission to install them at your own expense. If your housing was built for first occupancy after March 13, 1991 and the walls need to be reinforced for grab bars, your housing provider must pay for that to be done.

If you have an impairment that requires a parking space close to your unit, you can request your housing provider to provide you with that parking space, or place you at the top of a waiting list if no adjacent spot is available.

If you have a visual impairment and require printed notices in an alternative format such as large print font, or need notices to be made available to you electronically, you can request that accommodation from your landlord.

Sample Form

Required Accessibility Standards

All buildings constructed for use after March 13, 1991, are required to meet the following standards:

Public and common areas must be readily accessible to and usable by persons with disabilities;

All doors must be sufficiently wide to allow passage by persons in wheelchairs; and

All multi-family buildings must contain accessible passageways, fixtures, outlets, thermostats, bathrooms, and kitchens.

If you believe that your building does not meet the required accessibility standards, you can file a complaint with the New York State Division of Human Rights.

How to File a Complaint

A complaint must be filed with the Division within one year of the alleged discriminatory act. You can find more information on your rights, and on the procedures for filing a complaint, by going to www.dhr.ny.gov, or by calling 1-888-392-3644 with questions about your rights. You can obtain a complaint form on the website, or one can be e-mailed or mailed to you. You can also call or e-mail a Division regional office. The regional offices are listed on the website.

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

Electronic Delivery

- Without specific guidance a licensee should act in good faith if trying to comply
- Until such guidance is released, it would be reasonable for licensees to follow the same requirements for the electronic delivery of the “Housing and Anti-Discrimination Disclosure Form”

H&ADDF requirement

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.

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)
 - This would appear to be the scenario that accomplishes the intent of the law.
 - It makes sense that the tenant would want to know of their right prior to occupying

NYS Exec Law §296-Amended

- Current tenants within 30 days of effective date
 - No later than April 2, 2021
 - All tenants currently occupying leased “housing accommodations”

NYS Exec Law §296-Amended

- Notice must be posted in every vacant housing unit available for rent
- <https://dhr.ny.gov/requirednotice>

NYS Exec Law §296(18-a)

- DHR has yet to post guidance on posting the notice at every vacant housing accommodation that is available for rent.
- This does not appear to require the posting in every housing accommodation
- It would be applicable to a non-occupied (no tenant) vacant housing accommodation

NYS Exec Law §296(18-a)

- For those licensees assuming the responsibility of the owner/landlord, posting should be clear and conspicuous
- For those licensees showing housing accommodations where the notice is not posted, the licensee should make the prospective tenant aware of the notice or provide a copy of the notice

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 at time of lease signing

NYS Exec Law §296-Amended

NYSAR will notify members when additional guidance is provided by DHR

Accommodation Sometimes Called Modification

a change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces, or to fulfill their program obligations.

Reasonable Accommodations

- Any change in the way things are customarily done that enables a person with disabilities to enjoy housing opportunities or to meet program requirements is a reasonable accommodation.
- In other words, reasonable accommodations eliminate barriers that prevent persons with disabilities from fully participating in housing opportunities, including both private housing and in federally-assisted programs or activities.
- Housing providers may not require persons with disabilities to pay extra fees or deposits or place any other special conditions or requirements as a condition of receiving a reasonable accommodation.

Reasonable Accommodations

- Since rules, policies, practices, and services may have a different effect on persons with disabilities than on other persons, treating persons with disabilities exactly the same as others will sometimes deny persons with disabilities an equal opportunity to enjoy a dwelling or participate in the program.
- Not all persons with disabilities will have a need to request a reasonable accommodation. However, all persons with disabilities have a right to request or be provided a reasonable accommodation at any time.

Examples of Reasonable Accommodations

- Assigning an accessible parking space for a person with a mobility impairment
- Permitting a tenant to transfer to a ground-floor unit
- Adjusting a rent payment schedule to accommodate when an individual receives income assistance
- Permitting an applicant to submit a housing application via a different means

Reasonable Modifications

- Under the Fair Housing Act, a reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.
- Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas.

Examples of Reasonable Modifications

- Adding a grab bar to a tenant's bathroom
- Installation of a ramp into a building
- Lowering the entry threshold of a unit

HUD

Under the Fair Housing Act, prohibited discrimination includes a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.

HUD FHEO Website

https://www.hud.gov/program_offices/fair_housing_equal_opp

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

- Requirements for Social Media sites are the same as web based advertisements

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”.

Methods of Compliance

- Try to comply with all advertising requirements and disclosures on your SM homepage
- If you can comply you should
- If it is impossible to comply, the following options are available:
 - Pinning
 - Threading
 - Clear, conspicuous and unambiguous link to the required disclosures
 - clearly and conspicuously disclose the link's purpose
 - cannot simply state “click here for more information”

NYC SEXUAL HARASSMENT TRAINING FOR INDEPENDENT CONTRACTORS

NYS FAQ's

4. Are employers required to have their independent contractors complete annual sexual harassment prevention training?

Yes. Similar to employees and interns, if an independent contractor works for an employer of 15 or more people and works (a) more than 80 hours in a calendar year AND (b) for at least 90 days (does not need to be consecutive), then the independent contractor must be trained. If an independent contractor worked less than 90 days, or less than 80 hours in a calendar year, they do not need to be trained.

NYS FAQ's

5. Do independent contractors count as “employees” for the purposes of calculating the 15-employee minimum?

Yes. Independent contractors – regardless of the number of days or hours they work – are considered employees for the purposes of determining whether an employer is obligated to provide the annual sexual harassment training.

NYS FAQ's

8. How does the training requirement apply to employees and employers based outside of New York City?

- Any employees who work or will work in New York City for more than 80 hours in a calendar year AND for at least 90 days must be trained, regardless of whether the employer is based in New York City.
- If an employee is based elsewhere but regularly interacts with other employees in New York City, even if they are not physically present in the City, they should be trained.

Good News

NYC provides the training for free

<https://www1.nyc.gov/site/cchr/law/sexual-harassment-training.page>

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