

FEBRUARY 2022 MONTHLY LEGAL UPDATE

Legal Hotline

Monday-Friday

9:00a.m.-4:00p.m.

518-436-9727

Free CE!!!

- NYSAR's free monthly Legal Update CE
- May take once every license renewal period for 1 credit under legal update category
- Recorded and livestreamed for non-credit

Future Dates

• **2022 Dates**

March 16

April 25

May 9

June 15

July 18

August 16

September 20

October 26

November 21

December 12

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

HOMEOWNERS INSURANCE: DOG BREED

Insurance Law §3421

- Homeowners' liability insurance; dogs
- 1. With respect to homeowners' insurance policies...no insurer shall refuse to issue or renew, cancel, or charge or impose an increased premium or rate for such policy or contract based solely upon harboring or owning any dog of a specific breed or mixture of breeds.

Are dogs a protected class now?

- No, dogs and/or dog owners are not protected
- Owners with service animals are protected
- Some landlords were refusing accommodation due to insurance restrictions on breeds
- Insurance companies were slow to change policies
- Possible violation of Fair Housing if service animal

What policies can a landlord have?

- No pet policy
- Only certain types of pets (no dogs but cats OK)
- Weight restrictions of pets (under 20 pounds)
- Does not apply to service animals

NEW FAIR HOUSING LAWS

S.2157-A/A.6355 (Chapter 699 of 2021)

- Requires two years' experience as an associate broker before designation as an office manager; and establishes a standard for the supervision of real estate agents and associate brokers by office managers that is equivalent to that of a licensed broker.
- This bill was signed into law without any changes and is now in effect.

S.2157-A/A.6355 (Chapter 699 of 2021)

- If an associate broker was already an Office Manager prior to 12/21/21, they are “grandfathered” in.

S.3437-C/A.2300-C (Chapter 701 of 2021)

- Requires the state to establish a telephone hotline for housing discrimination complaints.
- This bill was signed into law without any changes and will go in effect April 20, 2022 (120 days after being signed into law).

New York State Housing and Anti-Discrimination Disclosure Form

YOU HAVE THE RIGHT TO FILE A COMPLAINT

If you believe you have been the victim of housing discrimination you should file a complaint with the New York State Division of Human Rights (DHR). Complaints may be filed by:

- Downloading a complaint form from the DHR website: www.dhr.ny.gov;
- Stop by a DHR office in person, or contact one of the Division's offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint. A list of office locations is available online at: <https://dhr.ny.gov/contact-us>, and the **Fair Housing HOTLINE at (844)-862-8703**.

S.538-B/A.4638-A (Chapter 686 of 2021)

- Adds 2 hours of implicit bias education for real estate licensees within the 22.5 hours of CE requirements.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment (S.7769) that will extend the effective date to 9 months after being signed into law.
- September 21, 2022

S.538-B/A.4638-A (Chapter 686 of 2021)

- Courses need to be developed
- DOS must approve courses
- Courses must be offered
- NYSAR will have courses available

S.979-A/A.844-A (Chapter 688 of 2021)

- Adds 2 hours of cultural competency education for real estate licensees within the 22.5 hours of CE requirements.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment (S.7770) to define “cultural competency” as “understanding cultural norms, preferences and challenges within our diverse communities;” and will extend the effective date to 9 months after being signed into law.
- September 21, 2022

S.979-A/A.844-A (Chapter 688 of 2021)

- Courses need to be developed
- DOS must approve courses
- Courses must be offered
- NYSAR will have courses available

S.2131-A/A.6186 (Chapter 696 of 2021)

- Requires the Department of State (DOS) to develop regulations pertaining to requiring brokerages to institute standard operating procedures (SOPs) and submit them to the DOS.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment (S.7729) the effective date will be extended to April 20, 2022; the DOS will still have to go through the regulatory process which could extend the date brokers would be required to comply.

S.2131-A/A.6186 (Chapter 696 of 2021)

...shall include but not be limited to the following:

- (i) whether prospective clients shall show identification;
- (ii) whether an exclusive broker agreement is required; [and]
- (iii) whether pre-approval for a mortgage loan is required; and
- (iv) any other such standardized operating procedures as the secretary of state shall determine by regulation and upon notice and public hearing.

S.2131-A/A.6186 (Chapter 696 of 2021)

Other amendments:

- Real estate brokers must date stamp, notarize and post SOPs on any public websites, mobile apps, and upon request, at any office locations. Licensees and teams also required to post on website and/or app
- Any alterations to SOPs must also be date stamped and notarized within 30 days and archived by the broker.
- Affirmation of compliance to the DOS will be required of brokers at the time of renewal of a license.

S.2132-B/A.5359 (Chapter 697 of 2021)

- Increases pre-licensing broker and salesperson course hour requirements to 152 hours and 77 hours, respectively, with 6 hours focused on fair housing for salespersons; and requires instructors' compliance in course education under oath.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment (S.7730) that allows for instructors to submit an oath of compliance electronically, and will extend the effective date to December 21, 2022 (1 year after being signed into law).

S.2133-A/A.5363 (Chapter 698 of 2021)

- Adds an additional \$30 surcharge to the license fee for real estate brokers and an additional \$10 surcharge to the license fee for real estate salespersons to be used for statewide fair housing testing efforts.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment (S.7731) that makes technical changes to the distribution of funds into an anti-discrimination in housing fund and will extend the effective date to January 20, 2022 (30 days after being signed into law).

S.945-B/A.6866 (Chapter 687 of 2021)

- Increases the maximum fine for real estate license violations from \$1,000 to \$2,000, with new funds dedicated to a new anti-discrimination in housing fund.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment (S.7728) that makes technical changes to the obligations and reporting requirements of the state Attorney General pertaining to conducting fair housing testing; and will expedite the effective date to January 20, 2022.

S.1353-A/A.5428-A

- Requires all state and local agencies administering housing programs or enforcing housing laws that receive state funding to affirmatively further fair housing. Agencies must take meaningful steps to further fair housing.
- Update: Governor Hochul and the Legislature have agreed to a chapter amendment that the Commissioner must report significant steps taken every five years, with interim reporting in year two and year four.

Resources

- REALTOR Resources
- <https://www.nysar.com/fair-housing/>
- <https://www.nar.realtor/fair-housing>

- Government Resources
- <https://www.hud.gov/fairhousing/>
- <https://dos.ny.gov/fair-housing>
- <https://dhr.ny.gov/fairhousing>

CHANGES TO NAR CODE OF ETHICS

Standard of Practice 1-8

Realtors[®], acting as agents or brokers of buyers/tenants, shall submit to buyers/tenants all offers and counter-offers until acceptance but have no obligation to continue to show properties to their clients after an offer has been accepted unless otherwise agreed in writing. Upon the written request of the listing broker who submits a counter-offer to the buyer's/tenant's broker, the buyer's/tenant's broker shall provide, as soon as practical, a written affirmation to the listing broker stating that the counter-offer has been submitted to the buyers/tenants, or a written notification that the buyers/tenants have waived...

Standard of Practice 1-7

When acting as listing brokers, REALTORS® shall continue to submit to the seller/landlord all offers and counter-offers until closing or execution of a lease unless the seller/landlord has waived this obligation in writing. Upon the written request of a cooperating broker who submits an offer to the listing broker, the listing broker shall provide, as soon as practical, a written affirmation to the cooperating broker stating that the offer has been submitted to the seller/landlord, or a written notification that the seller/landlord has waived the obligation to have the offer presented. REALTORS® shall not be obligated to continue to market the property after an offer has been accepted by the seller/landlord. REALTORS® shall recommend that sellers/landlords obtain the advice of legal counsel prior to acceptance of a subsequent offer except where the acceptance is contingent on the termination of the pre-existing purchase contract or lease. (Amended 1/20)

Standard of Practice 12-1

Realtors[®] must not represent that their brokerage services to a client or customer are free or available at no cost to their clients, unless the Realtor[®] will receive no financial compensation from any source for those services. (*Amended 1/22*)

Symbols of Hate-Code of Ethics

- Case interpretation 10-11: listing broker is responsible for content displayed publicly when engaging in real estate brokerage.
- display of the Confederate flag conveyed a discriminatory preference...the listing broker's inclusion, intentional or not, of photos including the Confederate flag could be reasonably construed as indicating a racial preference or illegal discrimination based on a protected class, and therefore was a violation of Article 10, as interpreted by Standard of Practice 10-3 and Standard of Practice 10-5.

Public Buildings Law §146

- 1. The **state of New York** shall not sell or display any symbols of hate or any similar image, or tangible personal property, inscribed with such an image unless the image appears in a book, digital medium, museum, or otherwise serves an educational or historical purpose.
- 2. For the purposes of this section, the term "symbols of hate" shall include, but not be limited to, symbols of white supremacy, neo-Nazi ideology or the Battle Flag of the Confederacy.

Symbols of Hate

- Only applies to actions by the State of New York
- Does not apply to private residences/businesses

AMENDMENTS TO THE TENANT PROTECTION ACT

Tenant Protection Act

- Prohibits landlords from collecting:
 - Security deposit greater than 1 month rent
 - Advances on rent other than 1st month

Tenant Protection Act-Amendment

- Exempts “Seasonal Use Dwelling Unit” (SUDU) from security deposit and rent advances
- To qualify for SUDU must on “seasonal use dwelling unit registry”
- If all requirements are not meant, no exemption and TPA applies

Tenant Protection Act-Amendment

- To qualify as a SUDU the rental must meet all the following requirements:
- The lease expressly provides that:
 - (i) the dwelling unit is registered as a seasonal use dwelling unit, indicating the local or county government agency with which it is registered; and
 - (ii) the occupancy of the tenant is only for seasonal use not to exceed one hundred twenty days or a shorter period provided for in the lease; and
 - (iii) such tenant has a primary residence to return to, the address of which is expressly provided in the lease; and

Tenant Protection Act-Amendment

- To qualify as a SUDU the rental must meet all the following requirements:
 - Such dwelling unit is not rented as a seasonal use dwelling unit for more than one hundred twenty days during each calendar year; and
 - The local government with jurisdiction for building administration over such unit, the county in which such unit is located, or the state shall have adopted a seasonal use dwelling unit registry; and
 - Such unit shall be registered by filing a copy of the seasonal use lease and such additional information as the local government, county, or state agency that administers such registry may require.

Tenant Protection Act-Amendment

- To qualify as a SUDU the rental must meet all the following requirements:
 - Such dwelling unit is not rented as a seasonal use dwelling unit for more than one hundred twenty days during each calendar year; and
 - The local government with jurisdiction for building administration over such unit, the county in which such unit is located, or the state shall have adopted a seasonal use dwelling unit registry; and
 - Such unit shall be registered by filing a copy of the seasonal use lease and such additional information as the local government, county, or state agency that administers such registry may require.

Tenant Protection Act-Amendment

- If there is no local, county or state registry, the property would remain subject to the deposit/advance provisions of TPA and would not be able to claim the exemption.

Tenant Protection Act-Amendment

- If a licensee is listing property for seasonal use and collecting more than one month's rent as a security deposit and/or more than one month's rent licensee would be required to verify that the property is registered as a "seasonal use dwelling unit" pursuant to the statute.
- If the property is not registered, the licensee may be liable for collecting more than one month's rent as a security deposit or more than one month's rent as an advance.

Tenant Protection Act-Amendment

- License required to verify compliance as a SUDU
- These obligations are no different than a licensee's responsibility to verify the legality of a rental property generally or where permits are required to rent.

Tenant Protection Act-Amendment

- At this time NYS does not have a registry
- County and local government is the most logical place for this to be done
- Many municipalities have rental permits already
 - SUDU would be a logical “add on”

COURT/DOS DECISIONS

DOS v N

- Open listing for rental
- Tenant was a foreign diplomat
- Representative of diplomat responded to ad for apartment
- Disclosed tenant was a diplomat
- Licensee emailed and asked what country

DOS v N

- Tenant responded with the country
- Licensee advised tenant that building management did not accept diplomats from that country as tenants.

DOS v N

- Licensee also used titles “licensed real estate agent” and “leasing director”

DOS v N

- DOS found licensee violated Fair Housing and NYS Human Rights law.
- DOS found licensee used improper titles
- Broker disciplined for “failure to supervise”
- Licensee and Broker licenses revoked

DOS v N

- By indicating that a building will not accept diplomats from a certain country was discriminatory in nature

DOS v N

- The decision noted that the building didn't rent to any diplomats due to immunity
- Licensee told tenant they didn't lease to a diplomat from that country.

DOS v N

- Can landlord refuse to rent to all diplomats?
- Not all diplomats are from other countries.
- If universally applied, it would not be discriminatory
- Landlords would need to consult with counsel if they have questions etc.

C v K

- C is a licensee
- K is a consumer
- K worked with C on a transaction
- K was unhappy with C
- K started a website about working with C

C v K

- Website recited K's opinion of C
- K described transaction and why unhappy
- K claimed that C was unprofessional, unresponsive, lacked negotiating skills and was the worst real estate broker

C v K

- C sued K for libel
- Court found not libel
- Statements were not actionable

C v K

- Licensees with questions about libel or slander on a website or app should consult with their attorney

D v P

- PCDS issue
- Buyer purchased property
- Buyer waived inspections
- PCDS provided by Seller

D v P

- PCDS stated no issues with plumbing
- Pre-closing walkthrough occurred
- No issues found by buyer
- Buyer signed document accepting property in its current condition with no exceptions

D v P

- Closing occurred
- 3 weeks later buyer used a shower for first time
- Water leaking into room below shower

D v P

- Buyer had contractor fix shower
- Contractor found evidence of prior leak
- Black mold and water spots found inside wall

D v P

- Buyer sues seller
- Claims PCDS created cause of action for false or incomplete statement on plumbing
- Court provided analysis

D v P

- Seller claims never had issues with shower
- Buyer did not provide testimony of mold inspector or plumber
- Buyer only submitted invoice from plumber

D v P

- Contract stated buyer takes property “as is”
- PCDS states nothing prevents parties from entering into agreements including “as is”
- Although PCDS is attached to contract, it is not a part of the contract

D v P

- PCDS does not supersede terms in contract
- PCDS states:
 - not a warranty
 - Not a substitute for inspections or tests
 - Buyer encouraged to obtain inspections and tests

D v P

- Court found seller had no knowledge of leak
- No evidence of active concealment
- Buyer had opportunities to inspect or test

N v M

- Commission issue
- Licensee to get commission split from broker
- 3 creditors make claim to split

N v M

- 6/2015 Licensee gave M 1st priority interest in all commissions
- 8/2017 Licensee gave commission advance service assignment of commissions for transaction and took advance
- 3/2018 Licensee had judgment against them

N v M

- Broker filed action to determine priority of claims
- Court found that the order of filing the interests determined order of claims
- M 1st, commission advance 2nd, judgment 3rd