

2022

LEGAL UPDATE

By Anthony Gatto, Esq.



MAY

FREE MONTHLY



New York State Association of REALTORS®, Inc.

Legal Hotline

Monday-Friday

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

518-436-9727

Welcome!!!

- 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

2022 Dates

June 15

July 18

August 16

September 20

October 26

November 21

December 12

REAL ESTATE BROKER STANDARD OPERATING PROCEDURES

Real Property Law 442-h(4)

- (a) Each real estate broker shall institute standardized operating procedures for the prerequisites prospective homebuyers must meet prior to receiving any services. Such standardized operating procedures shall include but not be limited to the following:
- (i) whether prospective clients shall show identification;
 - (ii) whether an exclusive broker agreement is required;
 - (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.

Real Property Law 442-h(4)

(b) Real estate brokers shall date stamp, notarize and post such standardized operating procedures on any publicly available website and mobile device application they maintain, shall make a copy of such procedures available to the public upon request at their office locations, and shall maintain a file of such standardized operating procedures while the broker's license is active. Any website or mobile device application maintained by a team or a real estate salesperson should also have the brokers' policies posted or have a direct link from such website or mobile device application to the brokers' website or mobile device application. If any alterations are made to the standardized operating procedures subsequent to such posting, real estate brokers shall date stamp, notarize and post such new standard operating procedures on any publicly available website or mobile device application they maintain within thirty days, and archive such alterations. Any broker or salesperson operating under a brokerage license that fails to adhere to such operating procedures shall be subject to the penalties imposed by section four hundred forty-one-c of this article.

(c) Any time a real estate broker is required to renew their license they must affirm to the department of state that they are in compliance with the requirements of this subdivision related to standardized operating procedures.

SOP

- Impacts:
 - Brokers
 - Associated Licensees
 - Teams

SOP

- All brokerages are impacted and must comply. There are no exemptions or carve outs for any type of brokerage. The DOS does not differentiate between brokers that practice exclusively in residential, commercial, leasing, referral or property management. As such, all brokers, associate brokers, salespersons and teams must be in compliance.

SOP

- (1) whether prospective clients shall show identification,
- (2) whether an exclusive broker agreement is required, and
- (3) whether pre-approval for a mortgage loan is required

SOP

- The law uses “prospective homebuyer” and “prospective clients”
- These terms should be defined the same referring to consumers that are buying a home:

SOP

- Every associated licensee and team must follow the broker SOP
- Associated licensees and teams are prohibited from having their own procedure

SOP

- Example:
 - Broker A SOP does not require an exclusive buyer broker agreement.
 - Salesperson Z with Broker A will not work with a buyer unless they have an exclusive buyer broker agreement
 - Salesperson Z is prohibited from:
 - requiring an exclusive buyer broker agreement
 - Refusing to work with a buyer that does not enter into an exclusive buyer broker agreement

SOP

- A broker may still offer an exclusive buyer broker agreement as an option but not a requirement.
- A broker may still suggest the benefits of a mortgage pre-approval but not require it

SOP

- If a broker requires one or more items and a prospective homebuyer refuses to provide the item(s) the broker may continue to provide services
- This must be consistent for all prospective homebuyers

SOP

- A seller may require a buyer to produce identification and mortgage pre-approval as a condition
- Brokers should notify clients that such items may be required

SOP

- Requires every brokerage to have a SOP
 - Date Stamped
 - Notarized
 - Hardcopy at office provide upon consumer request

SOP

- If amended must:
 - date stamp and notarize
 - replace hardcopy at office
 - post within 30 days
- Retain copies of all versions forever
- Broker required to affirm SOP upon license renewal

SOP

- Requires “clear and conspicuous” posting on all broker, associated licensee and team:
 - Websites
 - Applications
 - Social Media

Posting on Websites, Apps, Social Media

- The date stamped and notarized copy of the SOP's does not have to be posted to websites, apps and social media
- You may “cut and paste” the text of the SOP

Posting on Websites, Apps, Social Media

STANDARDIZED OPERATING PROCEDURE FOR PURCHASERS OF REAL ESTATE
PURSUANT TO REAL PROPERTY LAW §442-H

[REDACTED] (the “Broker”) is making this Standardized Operating Procedure available on any publicly available website and mobile device application maintained by the Broker and any of its licensees and teams. Broker has copies of these Standardized Operating Procedures available to the public upon request at Broker’s office location.

Please be advised that Broker:

- | | | |
|---|---|---|
| [REDACTED] Requires | [REDACTED] Does not require | 1. Prospective buyer clients to show identification* |
| [REDACTED] Requires | [REDACTED] Does not require | 2. Exclusive buyer broker agreements |
| [REDACTED] Requires | [REDACTED] Does not require | 3. Pre-approval for a mortgage loan / proof of funds* |

*Although Broker may not require such information, a seller of real estate may require this information prior to showing the property and/or as part of any purchase offer.

Posting to Social Media

- If traditional posting is not possible:
 - “Pinning” as first post with all required disclosures
 - Advertising regulations
 - Housing and Anti-Discrimination Notice
 - Broker SOP’s

SOP

- “As an alternative, the Department would permit...a clear, conspicuous and unambiguous link...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”.

Open Houses

- As the listing agent, you must act in the best interest of your seller and owe them fiduciary duties. Those fiduciary duties require the listing agent to get the seller's permission before requiring any item from prospective homebuyers.

SOP-Best Practice For Brokers

- As a best practice, brokers may want to consider creating a webpage with all required disclosures that associated licensees and teams can use for compliance

SOP-Best Practice For Brokers

- Create a “script” for licensees to follow
- Bullet points/talking points
- Educate associated licensees/employees

SOP-Best Practice For Brokers

- Establish timelines for required items
 - Scheduled meetings
 - Showings
 - “Walk ins”
 - Electronic communications
 - “No later than...”

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.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.

Education

- NAR
 - Fairhaven
 - Implicit Bias

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*)

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.