Legal Update 2025



MARCH

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New York State Association of REALTORS®, Inc.

Legal Hotline

Monday-Friday

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

518-436-9727

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ARE TELEMARKETING COLD CALLS STILL PROHIBITED?

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Are cold calls still prohibited?



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When Will the State of Emergency Expire?

- NO COLD CALLS OR COLD TEXTS
- The law is not industry specific and is triggered statutorily by **any** SoE
- Currently multiple SoE's in effect
- Only when all SoE is lifted will cold calling be permitted

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When Will the State of Emergency Expire?

- The following State of Emergency are still in effect:
- **EO 28.23: Support Asylum Seekers**
  Declared: Extended on February 14, 2025 (Original EO 28 declared May 9, 2023)
  Expires: March 16, 2025
- **EO 38.7: Disaster Emergency**
  Declared: Extended on February 19, 2025 (Original EO 32 declared August 9, 2024)
  Expires: March 21, 2025
- **EO 47.3: National Guard at Correctional Facilities**
  Declared: Extended on March 10, 2025 (Original EO 32 declared August 9, 2024)
  Expires: April 9, 2025

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When Will the State of Emergency Expire?

- NYSAR will notify members when there are no SOE's in effect via email blast
- In the past, it has taken 1-2 days for renewed SOE to be published

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FREE MONTHLY LEGAL UPDATE 2025 DATES

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2025 DATES

- April 8
- May 6
- June 17
- July 8
- August 19
- September 9
- October 21
- November 4
- December 9

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2025 DATES

- To register:
- https://www.nysar.com/education/legal-update/

- All sessions are recorded and available at the aforementioned website along with the PowerPoint slide deck.

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RECENTLY PASSED LEGISLATION

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New Laws

- Definition of “squatter”
- Good cause eviction

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Definition of Squatter

- RPAPL 711
  - A tenant shall not include a squatter. For the purposes of this section, a squatter is a person who enters onto or intrudes upon real property without the permission of the person entitled to possession, and continues to occupy the property without title, right or permission of the owner or owner's agent or a person entitled to possession
- A squatter is not entitled to any of the protections afforded to a legal tenant
- If question as to squatter vs. tenant, presumption is tenant

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Definition of Squatter

- The issue that is presenting itself is the initial determination as to whether the individual is a squatter or tenant
- This matter may afford the squatter certain rights if they claim to be a tenant
- The illegality of the occupancy would need to be established
- If lease is forged, that needs to be proven etc.
- We will need to wait and see how the courts address this

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Definition of Squatter

- If the individual occupying the property had a lease (verbal or written) then they are not a squatter even if they hold over
- Landlords should not claim an occupant is a squatter unless they meet the definition
- Landlords may be subject to liability for claiming a tenant is a squatter
- As this is a legal matter, licensees should not be providing advice, guidance or opinions other than having the landlord speak with their attorney

Good Cause Eviction

- Automatically applies to NYC
- Other municipalities may “opt-in” and make 2 modifications

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Good Cause Eviction

The new good cause eviction law prohibits the eviction or removal of tenants from all housing accommodations without good cause, but exempts the following housing accommodations:

- Premises owned by a “small landlord” (Small landlords are defined as any owner of no more than 10 units in the state.)*
- Owner occupied housing with no more than 10 units
- Units that are sublet, or being used for employment purposes
- Rent-regulated units & affordable housing units
- Condominium or cooperative units

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Good Cause Eviction

The new good cause eviction law prohibits the eviction or removal of tenants from all housing accommodations without good cause, but exempts the following housing accommodations:

- Units with a certificate of occupancy issued after 1/1/2009, for up to 30 years after the issuance of the certificate
- Seasonal use dwelling units
- Certain units used for health care purposes (hospital, assisted living, etc.)
- Manufactured homes, hotels, dormitories, religious facilities and institutions
- Units with a monthly rent greater than 245% of the fair market rent, as determined by the US Department of Housing and Urban Development (HUD)*

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Good Cause Eviction

The following are grounds for removal of tenants under the good cause eviction law:

- The tenant has failed to pay rent unless the rent that is owed is a result of an “unreasonable” rent increase. Unreasonable is defined as the lower of 5% plus the regional Consumer Price Index, or 10% annually.
- The tenant has violated a substantial obligation of their tenancy
- The tenant is permitting or committing a nuisance
- The tenant’s occupation is a violation of law which subjects the landlord to penalties
- The tenant is using the accommodation illegally

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Good Cause Eviction

The following are grounds for removal of tenants under the good cause eviction law:

- The tenant has refused access to the landlord for necessary repairs
- The landlord seeks to recover the unit for personal or familial use
- The landlord, in good faith, seeks to demolish the housing accommodation
- The landlord, in good faith, seeks to withdraw the unit from the rental market
- The tenant fails to agree to reasonable changes to a lease at renewal

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Good Cause Eviction

Localities that opt-in to the good cause eviction law may modify:

- The fair market rent threshold (units with monthly rents above the fair market rent would be exempt); and
- The definition of “small landlord”. For instance, the City of Albany opted-in to good cause eviction and lowered the threshold for exemptions from ten units to one unit.

Good Cause Eviction

Landlords renting units subject to the good cause eviction law are required to attach a specific notice to any initial lease, lease renewal or other notice required by the state's landlord-tenant laws, indicating that the unit is subject to the good cause eviction law.

Notice is in RPL §231-c

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Good Cause Eviction

- **Localities that have opted into the good cause eviction law**
  - Albany (City) – adopted in June 2024
  - Kingston (City) – adopted in July 2024
  - Ithaca (City) – adopted July 2024
  - Poughkeepsie (City) – adopted July 2024
  - Beacon (City) – adopted August 2024
  - Newburgh (City) – adopted September 2024
  - Nyack (Village) – adopted September 2024
  - Hudson (City) – adopted October 2024
  - New Paltz (Village) – adopted October 2024
  - Rochester (City) – adopted December 2024
  - Croton-on-Hudson – adopted January 2025
- https://www.nysar.com/advocacy/new-york-states-good-cause-eviction-law/

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Good Cause Eviction

- As this is a legal matter, licensees should not be providing advice, guidance or opinions other than having the landlord speak with their attorney
- Licensees that assume the role of property manager on behalf of landlord need to consult with their own attorney

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FRAUD/SCAMS

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Recent Frauds and Scams

- Deed theft
- Fake checks
- Mail theft

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Deed Theft

- **Establish Deed Theft as a Crime:** Under this new law, deed theft is now legally considered grand larceny, and can be prosecuted as such.
  - **Grand Larceny in the First Degree, a Class B Felony** applies to deed theft of a residential real property that is occupied as a home by at least one person and is a home that is owned by someone who is elderly, incapacitated, or physically disabled, or deed theft of three or more residential real properties, regardless of monetary value.
  - **Grand Larceny in the Second Degree, a Class C Felony** applies to deed theft of one residential property, one commercial mixed-use property with at least one residential unit, or two or more commercial properties, regardless of monetary value.
  - **Grand Larceny in the Third Degree, a Class D Felony** applies to deed theft of one commercial real property, regardless of monetary value.

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Deed Theft

- **Extend the Statute of Limitations:** This new law changes the statute of limitations to prosecute deed theft crimes so that prosecution must begin within five years of the theft or within two years after the rightful homeowner realizes their deed has been stolen, whichever occurs later.
- **Grant OAG Original Criminal Jurisdiction:** This new law grants OAG concurrent original jurisdiction to prosecute deed theft crimes alongside district attorneys throughout the state.

Deed Theft

- New Yorkers who believe they are a victim of deed theft are encouraged to contact OAG by
  - calling 1(800) 771-7755
  - emailing deedtheft@ag.ny.gov, or
  - https://formsnym.ag.ny.gov/OAGOnlineSubmissionForm/faces/OAGDTBHome

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Deed Theft

May occur with any type of property but is more popular with:

- Abandoned or vacant properties
- Second homes
- Properties in foreclosure
- Properties with tax or utility liens
- Properties where the homeowner is deceased, and the heirs do not legally transfer title to the property

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Deed Theft

- If you are contacted by a potential seller, be aware it may be an attempt at deed theft if:
  - You will never meet the seller during the transaction
  - The deed to the seller has been recently filed (get a copy)
  - If you request identification make sure the picture on the identification matches the person (schedule a video call to confirm identity)
    - May have repeated excuses why they can’t join a video call

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Deed Theft

- Deed theft can occur by:
  - Bad actor pretends to be the seller
  - Bad actor committed deed theft against owner and then poses as bona fide seller (1 degree of separation from lawful owner)
    - Bad actor may be actual person or person who stole someone else's identity

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Deed Theft

- Fiduciary duty to buyer client
- At the very least:
  - Disclosure (communicate suspected deed fraud)
  - Reasonable care
- Fiduciary duty to seller client:
  - If client is undertaking illegal activity, you cannot be a part of it and there are no fiduciary duties for illegal actions of principle

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Deed Theft

- What can you do if you suspect potential deed theft as a buyer's agent:
  - **Notify buyer's attorney (if no attorney recommend they get one)**
  - Verify identity of seller
  - Verify that notary on deed is real (NYSDOS lookup for licensees)
  - Verify title company listed is real
  - Verify attorney listed for seller is real

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Deed Theft

- What can you do if you suspect potential deed theft as a seller's agent:
  - **Notify seller's attorney (if no attorney that could be a red flag)**
  - Verify identity of seller's attorney (could be a co-conspirator)
  - Verify identity of seller
  - Verify that notary on deed is real (NYSDOS lookup for licensees)
  - Verify title company listed is real

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Deed Theft

- Create a paper trail for yourself if you suspect deed theft
- Communications to your client should be done via email/text/DM
- Don’t put your head in the sand and hope nothing bad happens



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Fake Checks-How to Spot a Fake Check

Determining whether a cashier's check or bank check is legitimate is difficult just by physical inspection. However, there are some things you can do to help identity a fake check:

- Make sure the check was issued by a legitimate bank. While some counterfeit checks will include a legitimate bank's name, a fake name is a sure giveaway. FDIC BankFind allows you to locate FDIC-insured banking institutions in the United States.
  - https://banks.data.fdic.gov/bankfind-suite/bankfind

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Fake Checks-How to Spot a Fake Check

- Check with the bank that supposedly issued the check to make sure it is real. Make sure you look up the phone number on the bank's official website and don't use the phone number printed on the check (that could be a phone number controlled and answered by the scam artist). Next, call the official number and ask them to verify the check. They will likely need to know the check number, issuance date, and amount.
- Consider how and why you received the check. If someone you don't know initiated the payment, be skeptical and proceed cautiously. Scammers often communicate with their victims via e-mail or text message. Their communications may contain poor grammar and spelling errors.

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Fake Checks-How to Spot a Fake Check

- Look where the check was mailed from--if the postmark is not the same as the city and state of the “supposed” issuing bank, it might be an indication the check is fake. Be especially cautious if it was mailed from overseas.
- Determine if the amount of the check is correct and as expected. Fake checks are often made out for more than the agreed upon amount. This is intended to coax the person receiving the check into wiring the overpayment back to the scammer.
- Official checks usually contain watermarks, security threads, color-changing ink and other security features. While scammers are able to sometimes copy these security features, the quality is often poorly executed.

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Fake Checks-What to Do If You Are Scammed

If you think you've been targeted by a counterfeit check scam, report it immediately to any of the following agencies:

- The U.S. Postal Inspection Service at www.uspis.gov (if you received the check in the mail).
- New York State Attorney General's Office. 1-800-771-7755, visiting http://www.oag.state.ny.us/complaints/complaints.html, or writing to: Office of the New York State Attorney General, The Capitol, Albany, NY 12224-0341.
- Federal Trade Commission at www.ftc.gov or by calling 1-877-382-4357.
- For possible online crimes involving counterfeit checks and money orders, file an online complaint with the Internet Crime Complaint Center (www.ic3.gov) (a joint project of the FBI and National White Collar Crime Center).
- Contact your bank

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Fake Checks

- If you are requested to refund all or part of the amount of a check, please do the following:
  - By law, banks have to make deposited funds available quickly, usually within 2 days.
  - When the funds are made available in your account, the bank may say the check has “cleared,” but that doesn’t mean it’s a good check.
  - Fake checks can take weeks to be discovered and untangled. By that time, the scammer has any money you sent, and you’re stuck paying the money back to the bank.

Fake Checks

- Don’t rely on money from a check unless you know and trust the person you’re dealing with.
- Even if the bank is required to make funds available to you, the check can still be fake and when it does not “clear” the bank will require you to return the funds

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Postal Service Scams

- Stealing incoming mail from mailbox
  - Credit cards
  - Financial statements (bank, lender, investments, credit cards etc.)
  - Mail containing personal identifiable information

- USPS Informed Delivery

- https://www.usps.com/manage/informed-delivery.htm

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COMING TO YOU SOON

Hi, Salvatore!

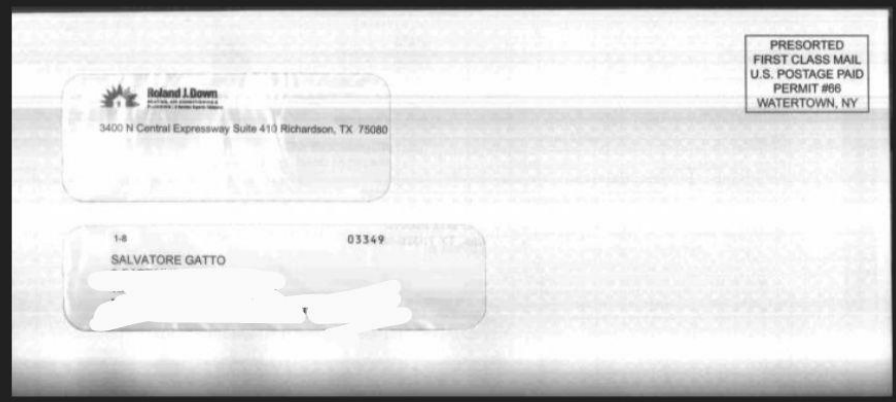
You have 2 mailpiece(s) and 2 inbound package(s) arriving soon.

DEC 18	2	2
	Mailpiece(s)	Package(s)

MAIL

View Dashboard

Expected Today — 2 item(s)



Do more with your mail

Set a Reminder

PACKAGES

View Dashboard

Expected Today

0 item(s)

No packages are available to display.

Expected 1-2 Days

0 item(s)

No packages are available to display.

Awaiting From Sender

2 item(s)

FROM: **AMAZON**

936128968[redacted]

FROM: **AMAZON**

936128968[redacted]

Outbound

0 item(s)

No packages are available to display.

Postal Service Scams

- Stealing outgoing mail from mailbox
  - Checks
  - Mail containing personal identifiable information
  - Bad actors look for “raised flags”
- Checks can be “washed” changing the payee and amount
- How to prevent check “washing”:
  - Security ink pens
  - Security ink toner (printers)

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Postal Service Scams

- Bring directly to Post Office (not a USPS mailbox)
  - In some areas “big blue” USPS mailboxes have been compromised
  - Reports of USPS employees robbed of “arrow key”
  - Bad actors have possession of the “arrow key”
  - “Arrow key” opens “big blue” USPS mailboxes
  - USPS is in process of changing “big blue” boxes and locks

NAR FAIR HOUSING REQUIREMENT

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NAR Fair Housing Training Requirements

- Effective January 1, 2025, through December 31, 2027 and for successive three year periods thereafter
- REALTOR® members of the association (with the exception of REALTOR® Emeritus status by the National Association) shall be required to complete Fair Housing training of not less than two (2) hours of instructional time during each three year period

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NAR Fair Housing Training Requirements

- This requirement will be satisfied upon presentation of documentation that the member has completed a course of instruction conducted by their local REALTOR® association, the State Association of REALTORS®, the NATIONAL ASSOCIATION OF REALTORS®, or the Institutes, Societies, and Councils, which meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time.

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NAR Fair Housing Training Requirements

- Fair Housing training approved by a state licensing authority for an existing Fair Housing requirement to maintain licensure shall also fulfill this requirement, provided it also meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS® from time to time.

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NAR Fair Housing Training Requirements

- NYS CE courses that may qualify:
  - three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property
  - two hours of cultural competency training
  - two hours of instruction pertaining to implicit bias awareness and understanding
- Please inquire with the school providing the CE as to whether the course meets the learning objectives and minimum criteria established by the NATIONAL ASSOCIATION OF REALTORS®.

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NAR Fair Housing Training Requirements

- Even though NYS requires “Fair Housing” training that complies with the NAR requirement, be careful of the dates you take the course

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NAR Fair Housing Training Requirements

- Sam the salesperson
- License renewed 7/1/2024
- Took more than 2 hours of Fair Housing CE course at Triple Play on 12/10/2024
- NAR requirement begins 1/1/2025
- Suri renews license on 7/1/2026
- 1st 3 year cycle for NAR requirement ends 12/31/2027
- Suri takes required NYS CE Fair Housing course on 6/1/2028
- Suri does not meet NAR requirement

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NAR Fair Housing Training Requirements

- REALTOR® members who have completed Fair Housing training as a requirement of membership in another association shall not be required to complete additional Fair Housing training until a new three year cycle commences.

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RECENT COURT/DOS DECISIONS

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C v W – Kings County

- Action for broker commissions
- Sale of condominium
- S-owner of property
- B-buyer of property
- BA-broker hired by buyer, B

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C v W – Kings County

- S and B entered into a contract to sell for $998k
- B signed a “Buyer Brokerage Agreement” with BA
- Agreement called for a $42k commission to BA
- S did not sign compensation agreement with BA

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C v W – Kings County

- Purchase contract signed by S and B
- Contract contained the following:
  - Broker: ... The Broker(s) shall be paid a commission by Seller pursuant to separate agreement. Seller shall pay the commission due pursuant to separate agreement ... This paragraph shall survive the closing.
  - Entire Contract: All prior understandings and agreements between the Parties are merged in this Contract and this Contract supersedes any and all understandings and agreements between the Parties and constitutes the entire agreement between them with respect to the subject matter hereof.
  - No Oral Changes: This Contract cannot be changed or terminated orally. The Attorneys may extend in writing any of the time limitations stated in this Contract. Any other provisions of this Contract may be changed or waived only in writing signed by the Party or Escrowee to be charged.

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C v W – Kings County

- Broker: ... The Broker(s) shall be paid a commission by Seller pursuant to separate agreement. Seller shall pay the commission due pursuant to separate agreement ... This paragraph shall survive the closing.
- This language is common in some purchase agreements

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C v W – Kings County

- Entire Contract: All prior understandings and agreements between the Parties are merged in this Contract and this Contract supersedes any and all understandings and agreements between the Parties and constitutes the entire agreement between them with respect to the subject matter hereof.
- This is known as the “merger clause” and prevents agreements made outside of the contract from impacting the terms of the contract

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C v W – Kings County

- No Oral Changes: This Contract cannot be changed or terminated orally. The Attorneys may extend in writing any of the time limitations stated in this Contract. Any other provisions of this Contract may be changed or waived only in writing signed by the Party or Escrowee to be charged.
- This requires any changes to the contract be made in writing signed by the parties

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C v W – Kings County

- 10/13 B closed on the purchase of the Property from S
- After the closing on 10/14, S's counsel notified B's counsel that S's final amount received was $42k short because B had deducted the Broker's fee from the final proceeds due to S.
- S then forwarded a copy of the Buyer Brokerage Agreement to B's counsel.
- B contended that the express terms of the Contract and rider state that S is responsible for the broker's fee and that, in accordance with the October emails, the payment to the Broker should come out of the sale price.

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C v W – Kings County

- S then commenced a lawsuit, asserting that the Contract and Rider contained an error as to whose responsibility it was to pay the broker's fee and that B had been unjustly enriched.
- B asserted a counterclaim for breach of contract, alleging that S failed to perform its obligation to pay the Broker's fee and requested compensatory damages, legal fees, costs and disbursements incurred.

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C v W – Kings County

- B filed a summary judgment motion on August 30, 2022.
- B argues that S's claims are barred as the Contract and Rider states that S shall pay the broker's commission fee.
- B contends that the Contract and Rider supersede the Buyer Brokerage Agreement because section 22 of the Contract contains a merger clause.
- Notwithstanding the merger clause, B points out that the Buyer Brokerage Agreement was neither signed by S nor was S a party to the Buyer Brokerage Agreement.

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C v W – Kings County

- S claims that mutual mistake, or unilateral mistake as a result of a fraud, are grounds for rescinding or reforming a contract
- S argues that extrinsic evidence is permitted in certain circumstances, even when the terms of the contract are not ambiguous.
- S argues that a party seeking to reform a contract based on situations like mutual mistake may rely on extrinsic evidence even if the agreement is not ambiguous.
- S asserts that B has been unjustly enriched.

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C v W – Kings County

- B claims that although S alleged that the Contract contained a mistake, its Complaint makes no request or allegation that the Contract should be reformed and it makes no mention of mutual or unilateral mistake.
- Even if a form of mistake was in S's complaint, B argues that S’s contentions would be without merit.
- B states that S's complaint has failed to plead with particularity a misrepresentation of material fact, falsity, scienter, or deception.

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C v W – Kings County

- B argues that there is no evidence that the purported mistake was a mutual one.
- B contends that S did not submit any affidavit stating that the alleged mistake was material or substantial and the complaint did not contain such a statement.
- B alleges that S's unjust enrichment claim cannot survive because the Contract, which explicitly provides that it is S's obligation to pay the broker, is an actual agreement between the parties.

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C v W – Kings County

- The court found that:
- The merger clause in the Contract specifically contains language declaring the document "the entire agreement between S and B with respect to the subject matter hereof."
- “Under New York law, a subsequent contract regarding the same subject matter supersedes the prior contract"

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C v W – Kings County

- The court cotinues:
- Buyer Brokerage Agreement and Contract both concern the same subject matter—the payment of the Broker’s fee—and since the Contract was executed last it controls.
- Court acknowledges that S was not a party to the Buyer Brokerage Agreement, "to inject an entirely different obligation into the parties' contract would not only modify the requirements spelled out in that agreement, it would also negate the merger clause, which states that the contract . . . supersedes all other understandings"

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C v W – Kings County

- The court continued:
- Despite B agreeing to pay the Broker's fee in the Buyer Brokerage Agreement, the Contract and Rider supersede this agreement and they definitively establish S’s obligation to pay the fee.

NYSAR Purchase Agreement

- Newly amended version to be published
- **REAL ESTATE BROKERS/COMPENSATION**

  The Buyer and Seller agree that _____ and _____ brought about the sale and no other brokers were involved in the sale, Seller agrees to pay the brokerage compensation as set forth in the written listing agreement or other written agreement (if applicable) and Buyer agrees to pay brokers' compensation as set forth in the written buyer agency compensation agreement or other written agreement (if applicable).

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NYSAR Purchase Agreement

- Newly amended version to be published
- **ENTIRE AGREEMENT**

  Except for separate written agreements for the compensation of real estate brokers referenced in paragraph 17, this contract contains all agreements of the parties hereto. There are no promises, agreements, terms, conditions, warranties, representations or statements other than contained herein. This contract shall apply to and bind the heirs, legal representatives, successors and assigns of the respective parties. It may not be changed orally. The parties agree that the venue for any issues concerning this contract shall be the county in which the property is located. As set forth in this agreement, "Business Day" means any full calendar day except Saturday, Sunday, any day which is a federal or New York State legal holiday or any day on which banking institutions in the State of New York are authorized by law or other governmental action to close.

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DOS v E

- Broker escrow issue
- LA-Listing Agent
- LB-Listing Broker
- BA-Broker’s Agent that brought buyer

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DOS v E

- LA listed property for sale in Albany
- Buyer made offer that was accepted
- Purchase contract was signed by all parties on or about 7/26/2019
- Buyer provided $1,000 good faith deposit to LA made out to LB
- According to the Contract, “If the offer is accepted by the Seller, all deposits will be held in escrow by the Listing Broker and deposited into the Listing Broker’s escrow account.”
- In addition, paragraph 16 of the Contract states that the Listing Broker is to hold the deposit in escrow or turn it over to a Court in the event of default… pending a resolution.”

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DOS v E

- The home purchase contract was cancelled on September 30, 2019 by letter from the buyer's attorney to the seller's attorney
- Buyer's attorney cancelled contract because "that the subject property had been subjected to theft, vandalism, and other damage, including, but not limited to, the destruction of the bathrooms and kitchen, removal of the boiler and other HVAC piping."
- Buyer requested a return of the deposit.
- In a letter dated November 6, 2019, buyer's attorney demanded a refund of the good faith deposit from seller's attorney without further delay.
- On or about November 29, 2019, buyer's attorney was verbally advised by seller's attorney and LA that LA had tendered the $1,000 escrow good faith deposit to the seller without the authorization of the buyer and contrary to the terms of the contract.

DOS v E

- DOS interviewed LA and LB as part of investigation
- LA acknowledged that the deposit check was provided to the seller directly and that LB did not maintain an escrow account
- LB acknowledged that brokerage did not maintain an escrow account
- LB told DOS that an attorney or law firm typically handles the deposit monies for real estate transactions in their geographic area
- LB provided a letter from their attorney to DOS that stated the LB does not, nor ever has had, an escrow account and that in their geographic area real estate brokers do not have escrow accounts as the downpayments for all real estate contracts are held by the attorneys for the seller in the attorney's law firm's escrow account

DOS v E

- LB testified that deposit check was not given to the seller's attorney but was deposited into the seller's personal bank account.
- LB stated that the bank erred in processing the deposit check since the check was made out to brokerage and then deposited into the seller's bank account.
- LB also testified that the deposit was held in a manner customary in LB geographic area and believes that LB is not responsible for the buyer's loss of the deposit

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DOS v E

- LA testified that he received a text from BA, inquiring about where to send the seller's deposit check.
- LA informed BA that LB does not escrow deposit money and that the deposit check should be forwarded to the seller's attorney.
- BA suggested sending the deposit check directly to the seller.
- LA spoke with the office manager at LB who approved sending the deposit check directly to the seller.
- LA testified that he instructed BA to make the deposit check out to the seller.
- LA was not aware that BA made the deposit check out to LB

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DOS v E

- Regarding the issue of maintaining an escrow account and safeguarding the buyer's deposit money, the seller and buyer signed the Contract on terms acceptable to both the seller and the buyer.
- A licensed real estate agent who undertakes to act on behalf of persons who seek to acquire an interest in real property acts as a fiduciary agent.
- An escrow agent is a person, other than a seller, who holds a buyer's down payment pursuant to the provisions of a contract
- LA acted as a fiduciary agent for the buyer and was bound by applicable agency law and the Contract. As an escrow agent the law imposed on LA the fiduciary obligation to safeguard the buyer's deposit in a special bank account and not commingle such down payment with the escrow agent's personal or business funds

DOS v E

- By statute, LA was to hold the buyer's deposit check in a special bank account.
- In addition, LA derived his authority from the escrow arrangement set forth in the Contract.
- By sending the deposit check directly to the seller contrary to the terms of the Contract and contrary to LB's practice of sending the deposit check to an attorney, in this case, the seller's attorney, to be held in escrow, LA breached his fiduciary duty by not having the seller's attorney hold the deposit check in escrow.
- In the alternative, LA should have turned over the deposit check to a Court pending a resolution of the dispute between the buyer and the seller regarding the condition of the subject property as set forth in the Contract.
- Payment of the disputed escrow to the seller without express authorization of the buyer was a violation of the Contract, agency law, and statute.

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DOS v E

- Pursuant to RPL §443, a listing agent who provides direction and instruction to a broker's agent will have liability for the acts of the broker's agent.
- BA represented the seller as the selling agent and in cooperation with LA who instructed BA to send the deposit check directly to the seller.
- LA is liable for the acts of BA by instructing her to send the deposit check directly to the seller instead of sending the deposit check directly to the seller's attorney.
- By failing to carry out the requirements of the regulatory scheme and the terms of the Contract in safeguarding the buyer's deposit check and by instructing BA to send the deposit check directly to the seller, LA has violated RPL §443 and has demonstrated incompetency in violation of RPL §441-c.

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DOS v E

- Pursuant to 19 NYCRR §175.21 and RPL §441(1)(b), a real estate salesperson is required to work under the direct supervision of the real estate broker with whom he or she is associated.
- LA testified that the office manager at LB was the person who approved sending the deposit check directly to the seller.
- Based upon LB's testimony, LB was not part of the decision in approving sending the deposit check to the seller. By failing to provide direct supervision of LA, LB has violated the regulation and statute.

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