Legal Update 2025



NOVEMBER

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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
- 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?

- SOE's are renewed on a monthly basis
- In the past, it has taken 1-2 days for renewed SOE to be published

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What Can We Do?

- NYSAR has proposed legislation requiring the Governor to reevaluate the cold calling ban for any SoE that is filed
- Lobby Day and answer NYSAR Call for Action

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FREE MONTHLY LEGAL UPDATE 2025 DATES

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2025 DATES

- December 2

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2026 DATES

- January 13
- February 17
- March 17
- April 28
- May 12
- June 9
- July 7
- August 11
- September 8
- October 20
- November 17
- December 15

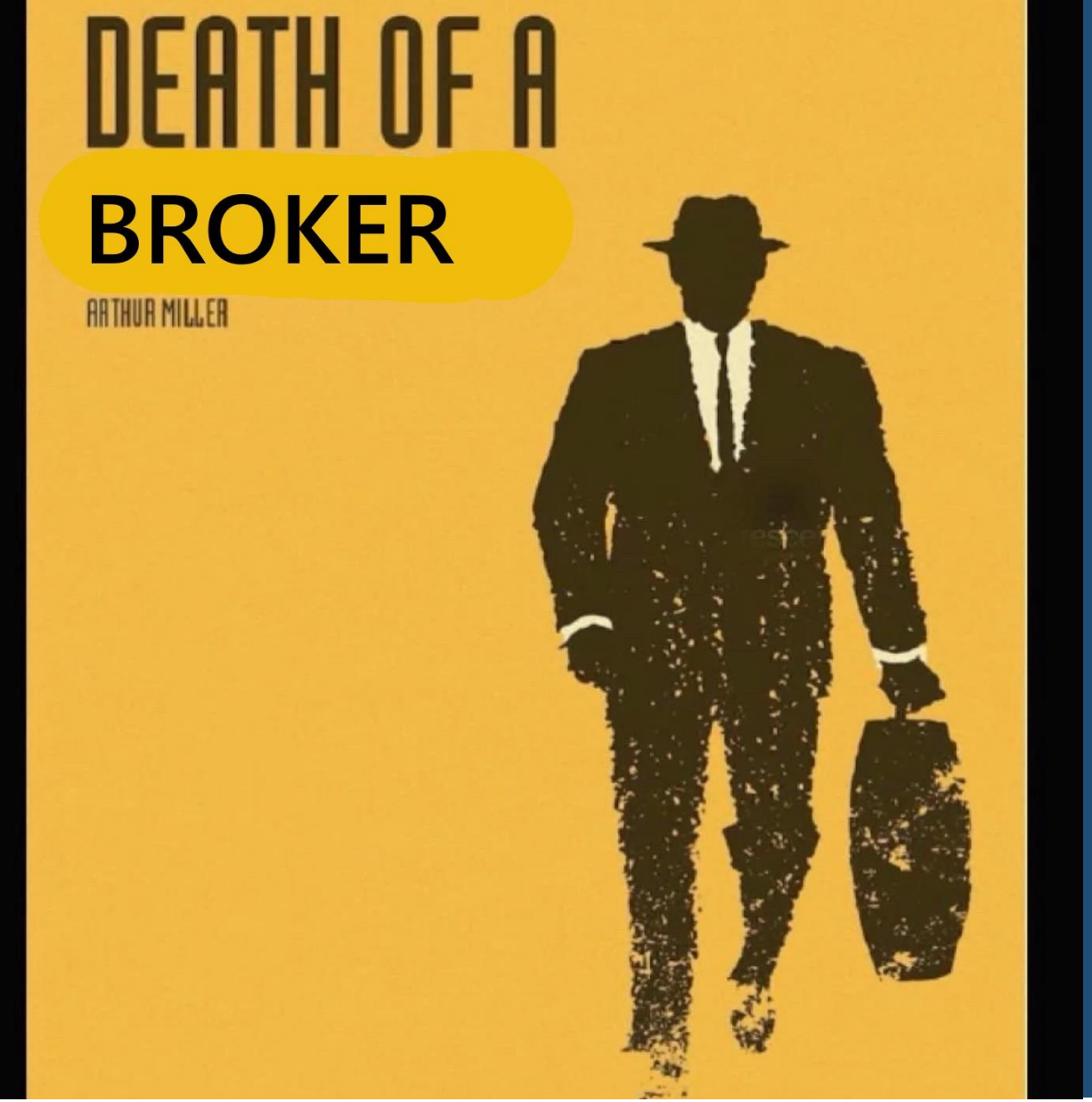
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Registration

- 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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DEATH OF A BROKER (NOT A SALESMAN)

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Death of a Broker

RPL §441-a. License and pocket card

8. Death of broker. A license issued to a real estate broker who was, at the time of their death, the sole proprietor of a brokerage office may be used after the death of such licensee by their duly appointed administrator or executor in the name of the estate pursuant to authorization granted by the surrogate under the provisions of the surrogate's court procedure act for a period of not more than one hundred twenty days from the date of death of such licensee in order to complete any unfinished realty transactions in the process of negotiation by the broker or their salespersons existing prior to their decease.

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Death of a Broker

RPL §441-a. License and pocket card

8(cont). There shall be endorsed upon the face of the license, after the name of the decedent, the words “deceased”, the date of death and the name of the administrator or executor under whose authority the license is being used.

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Death of a Broker

RPL §441-a. License and pocket card

8 (cont). The period of one hundred twenty days may be extended upon application to the secretary of state, for good cause shown, for an additional period not to exceed one hundred twenty days.

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Death of a Broker

RPL §441-a. License and pocket card

8 (cont). A license expiring during such period or extension shall be automatically renewed and continued in effect during such period or extension. No fee shall be charged for any such license or renewal thereof.

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Broker License Types

- Trade Name Broker: A trade name broker conducts business as a sole proprietorship, doing business as a name other than his/her personal name.
- Individual Broker: An individual broker is issued a license to do business using his/her personal name only.
- Partnership Broker: A partner or partners in a partnership may apply for a real estate broker license to conduct business under the partnership name. Any partner who wishes to engage in the business of a real estate brokerage must be licensed as a real estate broker. Each partner who wishes to be licensed as a real estate broker must file an application and fee.

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Broker License Types

- Corporate Broker: An officer of a corporation may apply for a real estate broker license to conduct business as a real estate brokerage under the corporate or assumed name. Applicants must be an officer prior to licensing.
- Limited Liability Company or Limited Liability Partnership: A member or manager of the limited liability company or limited liability partnership, who meets the qualifications for licensure, may apply for a real estate license to conduct business as a real estate brokerage under the limited liability company, assumed name or limited liability partnership name. Applicants must be a member or manager prior to licensing.

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Death of a Broker

What types brokers are covered under RPL §441-a(8)?

- Individual broker
- Trade name

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RPL§441-a(8) Bill Jacket

This bill will have no effect on brokers' offices which are conducted as partnerships or by corporations. Such organizations can effect their continuation by other means if they so desire, and we feel that it would be improper to impose the administrator or executor of a deceased broker upon the surviving partners and former business associates.

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Death of a Broker

What types of broker licensees are not covered under RPL §441-a(8)?

- Partnership
- Corporate
- LLC/LLP

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Succession Plans for Partnership, Corporate & LLC

- Brokerage can have as many licensed brokers as they want
- Brokerage should consider multiple brokers for succession
- An associate broker is not a broker and cannot take over as broker

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Succession Plans

- Technically, if the broker is deceased and there is no other broker as part of a succession plan, the brokerage can no longer operate as there is no broker to supervise
- DOS should be notified if no other broker & they will release associated licensees
- Licensees are still free to associate with another brokerage prior to DOS termination

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Succession Plans

- Without a broker, licensees are prohibited from conducting licensed activities under that brokers license
- Consumers should seek advice of counsel as to any obligations for current contracts with broker
- The estate will wind down the partnership, corporate or LLC/LLP brokerage
- Brokerage can be closed, sold etc.

CONSUMER REVIEW FAIRNESS ACT

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Consumer Review Fairness Act of 2016 (CRFA)

- CRFA prohibits businesses from including clauses in standard form contracts that prevent clients or customers from posting negative reviews
- CRFA provides clear definitions

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Consumer Review Fairness Act of 2016 (CRFA)

- Form contract means a contract with standardized terms
  - (i) used by a person in the course of selling or leasing the person's goods or services; and
  - (ii) imposed on an individual without a meaningful opportunity for such individual to negotiate the standardized terms.
- As brokerages provide services using form contracts, the Act applies to brokerage activities

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CRFA

- The Act generally makes provisions of form contracts between sellers and individual consumers void from inception if the provisions:
  - (1) prohibit or restrict individuals from reviewing sellers' goods, services, or conduct;
  - (2) impose penalties or fees on individuals for such reviews; or
  - (3) require individuals to transfer intellectual property rights in such reviews.
- It shall be unlawful for a person to offer a form contract containing a provision described as void

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Spindrift Realty Contract Clause (ERTS & BACA)

Clients or customers of Spindrift Realty shall not disparage, defame, or injure the business or business reputation of Spindrift Realty. Clients or customers shall not make, post, or publish misleading, deceptive, untruthful, groundless, false, unfair or negative statements or commentary about Spindrift Realty to any internet website or domain, internet blog, internet social media, newspaper, magazine, television, radio, or other news or social media. Any clients or customers that post or publish a review of Spindrift Realty agree to transfer all rights, title and ownership of any post or publication made by clients or customers to Spindrift Realty. Spindrift Realty may take legal action against any client or customer who violates this provision.

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CRFA

- The CRFA voids such clauses in standard form contracts, permitting clients or consumers to share their experiences without fear of penalty or legal action from the business
- Anti-review clauses impact the market by misrepresenting the “value” of reviews by controlling the content
- This in turn helps businesses continue without receiving negative reviews thereby artificially inflating their rating
- Those businesses that do not prohibit negative reviews, will have a lower rating than those businesses that do

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CRFA

- Penalties for violation
- The use of an anti-review clause is a violation of the FTC rule addressing unfair or deceptive acts or practices. Penalties are determined on a case-by-case basis and may include:
  - Civil penalties: Violators may be subject to significant financial penalties.
  - Federal court orders: Issue a federal court order to stop enforcement of unlawful contract provisions.
  - Voiding illegal clauses: Any contract provision that illegally restricts consumer reviews is void from the beginning ("void from inception").
  - Corrective actions: If there is a settlement or court order, businesses may be required to notify clients and customers that anti-review clauses in their contracts are unenforceable

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CRFA

- The Act contains certain exceptions, including for contract provisions that bar the submission of confidential, private, or unlawful information.
- Please consult with your own legal counsel to review standard form contracts that may contain clauses that fall under the CRFA.

MORE SCAMS

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QR Codes

- Do not use a QR code unless you know source is legitimate
- Do not scan a random QR code
- Scanning a malicious QR code could expose you to:
  - Virus/malware on your phone
  - Identity theft
  - Financial fraud
- Fraudsters use:
  - Signs that are posted advertising missing dog, financial opportunity etc.
  - Stickers on ATM’s, Gas Pumps and other POS locations etc.

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QR Codes



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LOST DOG!!!

REWARD $500

HELP US FIND WILLOW

SCAN QR CODE FOR MORE INFO

USB Drives & Chargers

- Do not use a USB drive unless you know what is on it
- Do not use a USB drive you find
- Do not use a “promotional” USB drive provided through mail etc.
- Do not use an unknown USB charger
- USB drives are less than $1 each

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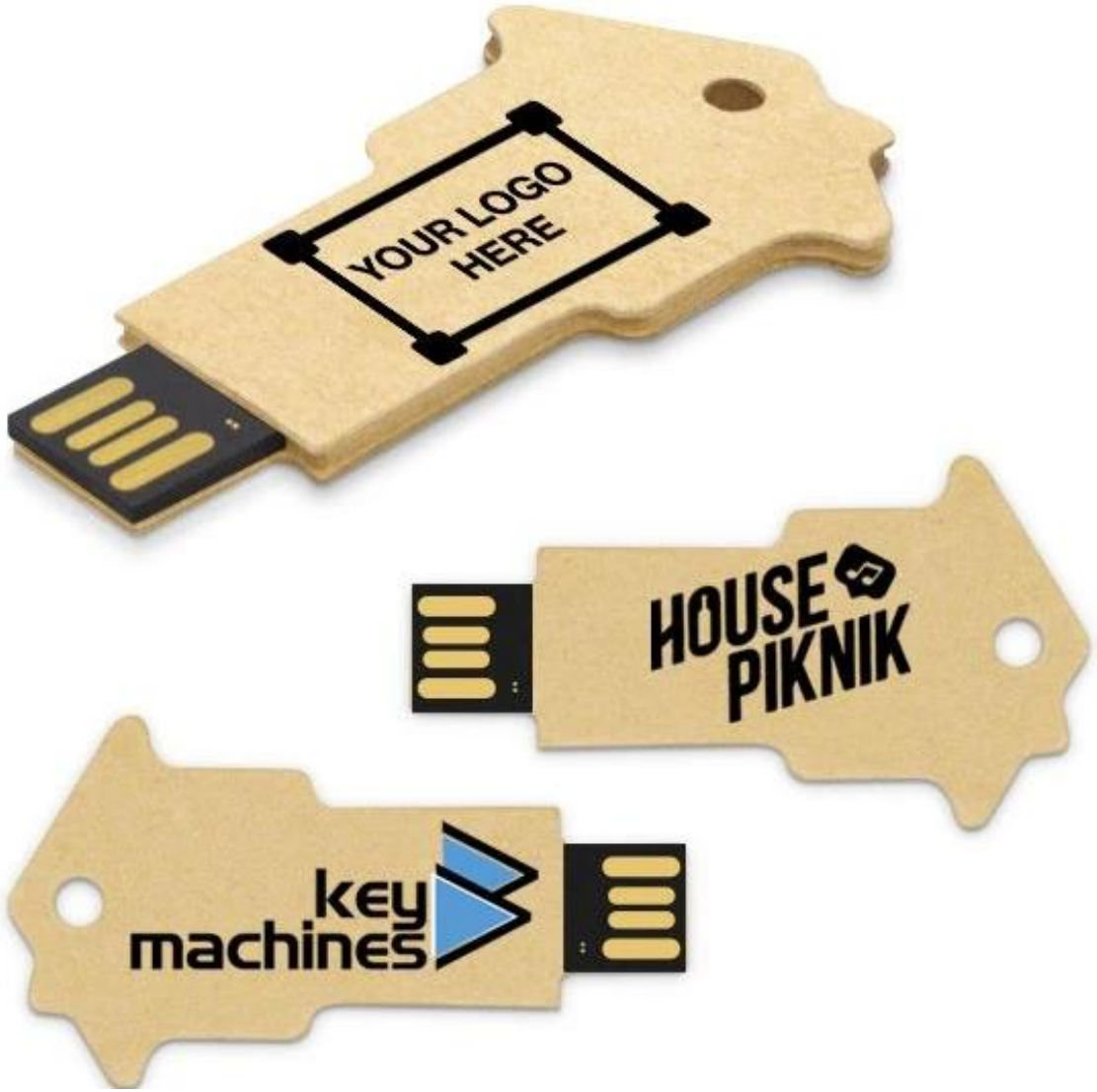
Stand Alone USB

Disposable

Inexpensive

Made of Cardboard

Any Design





USB as Part of a Mailer

Appear to be from a trusted source

SHORT TERM RENTAL LAW

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Short Term Rental Law

- New York State Law requiring registration of short-term rentals
- Effective date-September 22, 2025
- Laws regarding short-term rental registration be found in New York State Real Property Law 447-A through 447-G

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Definitions

- Short-term rentals are defined under this law as: “an entire dwelling unit, or a room, group of rooms, other living or sleeping space, or any other space within a dwelling, made available for rent by guests for less than thirty consecutive days, where the unit is offered for tourist or transient use by the short-term rental host of the residential unit, and where such unit is located in a covered jurisdiction.”

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Registration

- Counties in New York must establish registration systems for short-term rental units.
- Counties are allowed to share registries.
- Counties are required to post a “prominent link” to their registry on their websites

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Registration

- Registration requirement does not apply to:
  - counties (and the municipalities therein) that adopt a law within nine months of the effective date, stating that the county opts not to establish a short-term rental registry;
  - cities or counties within cities with populations of one million or more;
  - municipalities that have a law prohibiting short-term rentals.

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Cities with 1m or more

- NYC

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Short-term rental hosts

- Defined under law as “a person or entity in lawful possession of a short-term rental unit who rents such unit to guests in accordance with this article.”
- Short-term rental hosts must register a short-term rental unit within the county
- Such registration will be valid for a period of two years
- Host must pay application and registration fees, to be established by the county
- All advertisements for the short-term rental must include the current registration number

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Short-term rental hosts (continued)

Short term rental hosts are allowed to operate a dwelling unit as a short-term rental unit if it is registered in accordance with the county's short-term registry requirements and:

- "is not used to provide single room occupancy as defined by subdivision forty-four of section four of the multiple residence law and subdivision sixteen of section four of the multiple dwelling law;"
- "includes a conspicuously posted evacuation diagram identifying all means of egress from the unit and the building in which it is located;"
- "includes a conspicuously posted list of emergency phone numbers for police, fire, and poison control;"
- has a working fire extinguisher;
- has liability insurance of at least $300,000 for claims of property damage or bodily injury resulting from the rental (unless the booking service hired by the host has such coverage);
- "is not subject to the emergency tenant protection act of nineteen seventy-four, the rent stabilization law of nineteen sixty-nine, the emergency housing rent control law, the local emergency housing rent control act or otherwise regulated or supervised by a federal, state, or local agency pursuant to any other law or rule or an agreement with such federal, state, or local agency;"
- "is in compliance with any additional health and safety requirements or any other regulatory requirements applicable to short-term rental units established by any covered jurisdiction in which such short-term rental unit is located;"
- and is not otherwise prohibited from operating a short-term rental by any other laws, agreements, rules or regulations.

Short-term rental hosts (continued)

- Counties have the right to revoke registrations when there have been three violations of any provision of the short-term rental registry law by the short-term rental host, within a period of two consecutive calendar years and “may determine that the short-term rental host shall be ineligible for registration for a period of up to twelve months from the date of such determination or at the request of the covered jurisdiction in which the short-term rental unit is located when such covered jurisdiction requests such revocation due to illegal occupancy.”

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Short-term rental hosts (continued)

- Short-term rental hosts who offer short-term rental units without valid registration will be ineligible for registration for a period of twelve months from the date the violation occurred.

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Booking services

- Defined under law as : A person or entity who, directly or indirectly:
  - (a) provides one or more online, computer or application-based platforms that individually or collectively can be used to: (i) list or advertise offers for short-term rentals of short-term rental units, and (ii) either accept such offers, or reserve or pay for such rentals; and
  - (b) charges, collects or receives a fee for the use of such a platform or for provision of any service in connection with a short-term rental of a short-term rental unit
- Real estate licensees handling short-term rentals on behalf of clients would fall under the definition of “booking services”

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Booking Services (continued)

- Booking services are required under this law to collect data that is related to all the short-term rental unit guest stays that are facilitated by the booking service within the state.
- “Booking services shall maintain such data related to short-term rental unit guest stays that the booking service has facilitated in the state for two years following the end of the calendar year in which an individual rental stay occurred.”

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Booking Services (continued)

- Data maintained by booking services must include:
  - the dates of each stay and the number of guests
  - the cost for each stay (including an itemization of the sales tax and motel occupancy tax collected);
  - the physical address, including the unit designation, of each short-term rental unit booked;
  - the full legal name of the short-term rental host;
  - the unit's registration number.

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Booking Services (continued)

- Booking services are required to report this data to the county where the rental unit is located, beginning 90 days after the effective date of September 22, 2025, and on the first day of every January, April, July and October thereafter.
- Law goes on to state that “In the event a booking service does not comply with its reporting obligations pursuant to this subdivision, or more information is requested by the attorney general or a covered jurisdiction or any of such covered jurisdiction's enforcement agencies, then the data required to be reported pursuant to this subdivision and all relevant records from a booking service shall be produced in response to valid legal process.”

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Booking Services (continued)

- It is illegal for booking services to collect any fees for facilitating booking transactions if the booking services has not verified that the unit is currently registered with the county, unless the county does not require a short-term rental registry.
- Booking services may require that short-term rental hosts that hire them consent that the booking service report this data.
- Under this law, counties have the option to create a registration system for booking services.

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Booking Services (Continued)

Data sharing. Booking services shall provide to the department of state, at the same times and on the same recurring basis that they provide data pursuant to subdivision three of section four hundred forty-seven-b of this article, an electronic report aggregating the number of short-term rental unit guest stays that the booking service facilitated within the state for the applicable reporting period, which shall be for the ninety days preceding the date of production in the case of the first such report and for the period since the prior report for each subsequent report. The report shall include the aggregate number of short-term rental unit guest stays that the booking service facilitated during the applicable reporting period for each county where the listings are located. Such electronic report shall be in a form and manner as determined by the department of state.

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Penalties

- Short-term rental hosts in violation of this law shall receive warning notices for the first and second violations, and for the third violation, the county may impose a fine of up to $200 dollars, and $500 for each subsequent violation.
- Booking Services in violation of this law will be subject to a fine by the county the unit is located in, of up to $500 per violation, until the violation is cured.

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What Does This Mean for Real Estate Brokerages?

Real Estate Brokers should make sure that all of their associated licensees are checking to make sure that any short-term rentals they handle are property registered with the county. Any questions relating to the registration requirements of a short-term rental should be directed to the county in which the rental unit is located.

Real Estate Brokers should establish a system for maintaining and reporting the records related to the short-term rentals handled by the brokerage.

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State Sales Tax

- The new laws regarding short-term rentals also include state sales tax imposed on short-term rentals.
- This state sales tax is in effect right now.
- Licensees managing short-term rentals should consult with their own attorney or accountant for advice on the short-term term rental taxes or have their clients consult the appropriate professionals.

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RECENT COURT/DOS DECISIONS

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C v W – Kings County

- Action for broker commissions
- Sale of condominium
- C-owner of property
- W-buyer of property
- R-broker hired by buyer, W

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C v W – Kings County

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

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C v W – Kings County

- Purchase contract signed by C and W
- 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 W closed on the purchase of the Property from C
- After the closing on 10/14, C's counsel notified W's counsel that C's final amount received was $42k short because W had deducted the Broker's fee from the final proceeds due to C.
- C then forwarded a copy of the Buyer Brokerage Agreement to W's counsel.
- W contended that the express terms of the Contract and rider state that C 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

- C 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 W had been unjustly enriched.
- W asserted a counterclaim for breach of contract, alleging that C 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

- W filed a summary judgment motion on August 30, 2022.
- W argues that C's claims are barred as the Contract and Rider states that C shall pay the broker's commission fee.
- W 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, W points out that the Buyer Brokerage Agreement was neither signed by C nor was C a party to the Buyer Brokerage Agreement.

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C v W – Kings County

- C claims that mutual mistake, or unilateral mistake as a result of a fraud, are grounds for rescinding or reforming a contract
- C argues that extrinsic evidence is permitted in certain circumstances, even when the terms of the contract are not ambiguous.
- C 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.
- C asserts that W has been unjustly enriched.

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C v W – Kings County

- W claims that although C 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 C's complaint, W argues that C’s contentions would be without merit.
- W states that C'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

- W argues that there is no evidence that the purported mistake was a mutual one.
- W contends that C did not submit any affidavit stating that the alleged mistake was material or substantial and the complaint did not contain such a statement.
- W alleges that C's unjust enrichment claim cannot survive because the Contract, which explicitly provides that it is C'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 C and W 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 C 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 W agreeing to pay the Broker's fee in the Buyer Brokerage Agreement, the Contract and Rider supersede this agreement and they definitively establish C’s obligation to pay the fee.

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