



2023 Legal Update

OCTOBER



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

2023 Dates

November 14

December 19

How to Register

- NYSAR.com
- Education
- Legal Update CE Course
- Register for a legal update

ARE TELEMARKETING COLD CALLS STILL PROHIBITED?

Are cold calls still prohibited?

YES

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

How will I know when the SoE's expire?

- NYSAR news via email
- [nysar.com](https://www.nysar.com) homepage



How will I know when the SoE's expire?

- **EO 28.5: Support Asylum Seekers**

Declared: Extended on September 24, 2023 (Original EO 28 declared May 9, 2023)

Expires: October 23, 2023

- **EO 3.24: Disaster Emergency related to Gun Violence**

Declared: Extended on September 12, 2023 (Original EO 211 declared July 6, 2021)

Expires: October 11, 2023

General Business Law §399-z(14)(a)

Effective 9/13/2023

Where it is determined after hearing that any person has violated one or more provisions of this section, the secretary, or any person deputized or so designated by him or her may assess a fine not to exceed ~~eleven~~ **twenty** thousand dollars for each violation.

PCDS AMENDMENT FLOOD DISCLOSURE & REMOVAL OF \$500 “OPT OUT”

PCDS Amendment-Flood Disclosure

Effective March 20, 2024

PCDS Amendment-Flood Disclosure

A KNOWINGLY FALSE OR INCOMPLETE STATEMENT BY THE SELLER ON THIS FORM MAY SUBJECT THE SELLER TO CLAIMS BY THE BUYER PRIOR TO OR AFTER THE TRANSFER OF TITLE. ~~IN THE EVENT A SELLER FAILS TO PERFORM THE DUTY PRESCRIBED IN THIS ARTICLE TO DELIVER A DISCLOSURE STATEMENT PRIOR TO THE SIGNING BY THE BUYER OF A BINDING CONTRACT OF SALE, THE BUYER SHALL RECEIVE UPON THE TRANSFER OF TITLE A CREDIT OF FIVE HUNDRED DOLLARS AGAINST THE AGREED UPON PURCHASE PRICE OF THE RESIDENTIAL REAL PROPERTY.~~

PCDS Amendment-Flood Disclosure

As of March 20, 2024

Seller's are no longer able

to "opt-out" with a \$500

credit to the buyer

PCDS Amendment-Flood Disclosure

10. IS ANY OR ALL OF THE PROPERTY LOCATED IN A FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) DESIGNATED FLOODPLAIN? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

11. IS ANY OR ALL OF THE PROPERTY LOCATED WHOLLY OR PARTIALLY IN THE SPECIAL FLOOD HAZARD AREA ("SFHA"; "100-YEAR FLOODPLAIN") ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY'S (FEMA'S) CURRENT FLOOD INSURANCE RATE MAPS FOR YOUR AREA? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

12. IS ANY OR ALL OF THE PROPERTY LOCATED WHOLLY OR PARTIALLY IN A MODERATE RISK FLOOD HAZARD AREA ("500-YEAR FLOODPLAIN") ACCORDING TO FEMA'S CURRENT FLOOD INSURANCE RATE MAPS FOR YOUR AREA? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

PCDS Amendment-Flood Disclosure

13. IS THE PROPERTY SUBJECT TO ANY REQUIREMENT UNDER FEDERAL LAW TO OBTAIN AND MAINTAIN FLOOD INSURANCE ON THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

HOMES IN THE SPECIAL FLOOD HAZARD AREA, ALSO KNOWN AS HIGH RISK FLOOD ZONES, ON FEMA'S FLOOD INSURANCE RATE MAPS WITH MORTGAGES FROM FEDERALLY REGULATED OR INSURED LENDERS ARE REQUIRED TO OBTAIN AND MAINTAIN FLOOD INSURANCE. EVEN WHEN NOT REQUIRED, FEMA ENCOURAGES HOMEOWNERS IN HIGH RISK, MODERATE RISK, AND LOW RISK FLOOD ZONES TO PURCHASE FLOOD INSURANCE THAT COVERS THE STRUCTURE(S) AND THE PERSONAL PROPERTY WITHIN THE STRUCTURE(S). ALSO NOTE THAT HOMES IN COASTAL AREAS MAY BE SUBJECT TO INCREASED RISK OF FLOODING OVER TIME DUE TO PROJECTED SEA LEVEL RISE AND INCREASED EXTREME STORMS CAUSED BY CLIMATE CHANGE WHICH MAY NOT BE REFLECTED IN CURRENT FLOOD INSURANCE RATE MAPS.

PCDS Amendment-Flood Disclosure

14. HAVE YOU EVER RECEIVED ASSISTANCE, OR ARE YOU AWARE OF ANY PREVIOUS OWNERS RECEIVING ASSISTANCE, FROM THE FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA), THE U.S. SMALL BUSINESS ADMINISTRATION (SBA), OR ANY OTHER FEDERAL DISASTER FLOOD ASSISTANCE FOR FLOOD DAMAGE TO THE PROPERTY? YES NO UNKN NA (IF YES, EXPLAIN BELOW) FOR PROPERTIES THAT HAVE RECEIVED FEDERAL DISASTER ASSISTANCE, THE REQUIREMENT TO OBTAIN FLOOD INSURANCE PASSES DOWN TO ALL FUTURE OWNERS. FAILURE TO OBTAIN AND MAINTAIN FLOOD INSURANCE CAN RESULT IN AN INDIVIDUAL BEING INELIGIBLE FOR FUTURE ASSISTANCE.

15. IS THERE FLOOD INSURANCE ON THE PROPERTY? YES NO UNKN NA (IF YES, ATTACH A COPY OF THE POLICY)

A STANDARD HOMEOWNER'S INSURANCE POLICY TYPICALLY DOES NOT COVER FLOOD DAMAGE. YOU ARE ENCOURAGED TO EXAMINE YOUR POLICY TO DETERMINE WHETHER YOU ARE COVERED.

PCDS Amendment-Flood Disclosure

16. IS THERE A FEMA ELEVATION CERTIFICATE AVAILABLE FOR THE PROPERTY? YES NO UNKN NA (IF YES, ATTACH A COPY OF THE CERTIFICATE) AN ELEVATION CERTIFICATE IS A FEMA FORM, COMPLETED BY A LICENSED SURVEYOR OR ENGINEER. THE FORM PROVIDES CRITICAL INFORMATION ABOUT THE FLOOD RISK OF THE PROPERTY AND IS USED BY FLOOD INSURANCE PROVIDERS UNDER THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP) TO HELP DETERMINE THE APPROPRIATE FLOOD INSURANCE RATING FOR THE PROPERTY. A BUYER MAY BE ABLE TO USE THE ELEVATION CERTIFICATE FROM A PREVIOUS OWNER FOR THEIR FLOOD INSURANCE POLICY.

17. HAVE YOU EVER FILED A CLAIM FOR FLOOD DAMAGE TO THE PROPERTY WITH ANY INSURANCE PROVIDER, INCLUDING THE NATIONAL FLOOD INSURANCE PROGRAM (NFIP)? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

~~24.~~ 31. WHAT IS THE TYPE OF ROOF/ROOF COVERING (SLATE, ASPHALT, OTHER.)? ANY KNOWN MATERIAL DEFECTS? HOW OLD IS THE ROOF? IS THERE A TRANSFERABLE ~~WARRANTEE~~ WARRANTY ON THE ROOF IN EFFECT NOW? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

PCDS Amendment-Flood Disclosure

~~30.~~ 37. ARE THERE ANY FLOODING, DRAINAGE OR GRADING PROBLEMS THAT RESULTED IN STANDING WATER ON ANY PORTION OF THE PROPERTY? YES NO UNKN NA (IF YES, STATE LOCATIONS AND EXPLAIN BELOW)

~~31. DOES THE BASEMENT HAVE SEEPAGE THAT RESULTS IN STANDING WATER? YES NO UNKN NA (IF YES, EXPLAIN BELOW)~~ 38. HAS THE STRUCTURE(S) EXPERIENCED ANY WATER PENETRATION OR DAMAGE DUE TO SEEPAGE OR A NATURAL FLOOD EVENT, SUCH AS FROM HEAVY RAINFALL, COASTAL STORM SURGE, TIDAL INUNDATION OR RIVER OVERFLOW? YES NO UNKN NA (IF YES, EXPLAIN BELOW)

PCDS Amendment-Flood Disclosure

NOTE: BUYER IS ENCOURAGED TO CHECK PUBLIC RECORDS CONCERNING THE PROPERTY (E.G. TAX RECORDS AND WETLAND AND ~~FLOOD PLAIN~~ FEMA'S CURRENT FLOOD INSURANCE RATE MAPS AND ELEVATION CERTIFICATES)

PCDS Amendment-Flood Disclosure

Section 465. ~~Remedy~~ LIABILITY . 1. ~~In the event a seller fails to perform the duty prescribed in this article to deliver a disclosure statement prior to the signing by the buyer of a binding contract of sale, the buyer shall receive upon the transfer of title a credit of five hundred dollars against the agreed upon purchase price of the residential real property.~~ NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED AS LIMITING ANY EXISTING LEGAL CAUSE OF ACTION OR REMEDY AT LAW, IN STATUTE OR IN EQUITY.

2. Any seller who provides a property condition disclosure statement or provides or fails to provide a revised property condition disclosure statement shall be liable only for a willful failure to perform the requirements of this article. For such a willful failure, the seller shall be liable for the actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy.

Unknowns

- What if a seller fails to fill out the PCDS?
- Can the seller and buyer agree to waive the PCDS?
- Is there any penalty for not filling out form?
- What will lenders do?
- Do you have any liability if the seller does not fill out a PCDS?
- Resolved through court or legislative action

ARTIFICIAL INTELLIGENCE

What is AI

- Simulation of human intelligence by machines using algorithms.
- Learning, reasoning, self correction and creativity.
- AI systems use large amounts of data to find correlations and patterns
- AI then makes predictions using the data
- Can be used for graphics, videos and music

What Can AI Do For Me?

- **Property Valuation:** AI-powered tools can analyze historical data, market trends, and property features to estimate property values more accurately. This helps brokers provide clients with realistic pricing recommendations.
- **Predictive Analytics:** AI algorithms can predict future property values and market trends, allowing brokers to make informed investment recommendations to clients.
- **Property Search and Recommendation:** AI-driven search engines can help brokers quickly find properties that match a client's criteria by analyzing vast databases of property listings.
- **Chatbots and Virtual Assistants:** Chatbots can handle routine client inquiries, schedule appointments, and provide property information 24/7, freeing up brokers' time for more complex tasks.

What Can AI Do For Me?

- **Lead Generation:** AI can identify potential leads by analyzing online behavior, social media activity, and other data sources, helping brokers focus their marketing efforts effectively.
- **Market Analysis:** AI can provide real-time market analysis, including supply and demand data, competitor insights, and pricing trends, helping brokers make informed decisions.
- **Customer Relationship Management (CRM):** AI-powered CRMs can help brokers manage client relationships more effectively by tracking interactions, sending personalized follow-ups, and identifying potential upselling opportunities.
- **Property Management:** AI can assist with property management tasks like maintenance scheduling, tenant communication, and monitoring property conditions remotely.

What Can AI Do For Me?

- Natural Language Processing (NLP): NLP algorithms can analyze text data from property descriptions, client emails, and social media to identify emerging market trends and sentiment.
- Property Inspection: AI can be used for property inspection tasks, such as identifying maintenance issues through image recognition and providing detailed reports to clients.
- Investment Analysis: AI can assist in evaluating potential real estate investments by analyzing factors like cash flow, return on investment, and risk assessment.
- Pricing Strategy: AI can help brokers adjust pricing strategies in real-time based on market conditions and competitive analysis.

What Can AI Do For Me?

- **Fraud Detection:** AI can identify potential fraud or scams in real estate transactions, helping brokers protect their clients.
- **Legal Compliance:** AI tools can assist in ensuring that all legal and regulatory requirements are met during real estate transactions, reducing the risk of legal issues.
- **Marketing and Advertising:** AI can optimize marketing campaigns by targeting specific demographics, analyzing ad performance, and suggesting improvements.
- **Document Management:** AI-powered document management systems can help organize and categorize transaction-related paperwork, reducing administrative workload.

How Should I Use AI?

- AI should be viewed the same as a personal assistant
- All work product from AI must be reviewed by licensee
- AI isn't always correct
- Sometimes AI makes things up
- 3rd party products provide a wide variety of AI powered tools
- You may be using AI and don't realize it

Property Descriptions

- A great starting point
- Do not rely on AI to get it right
- Ask AI to write description in a certain style

Property Description-Straight Up

- Welcome to 130 Washington Ave, a charming and historic property nestled in the heart of Albany, New York. This beautifully maintained **residence** offers a unique blend of classic architectural features and modern amenities, making it the perfect place to call **home**. Conveniently located in Albany's vibrant downtown area, this property provides easy access to the city's rich **cultural**, dining, and recreational offerings.
- *Key Features:*
- **Historic Charm:** This property boasts a rich history and architectural character, featuring intricate detailing, **original hardwood floors, and elegant moldings** that harken back to a bygone era.
- **Spacious Layout:** With generous **living spaces**, this **home** offers room for both comfortable **living** and entertaining. **The open floor plan enhances the flow of natural light, creating a warm and inviting atmosphere throughout.**
- **Modern Updates:** While preserving its historic charm, the property has been thoughtfully updated to meet the demands of modern **living**. You'll find a fully equipped kitchen with stainless steel appliances, granite countertops, and ample cabinet space.
- **Master Suite:** **The property includes a spacious master bedroom with an en-suite bathroom, providing privacy and convenience.**
- **Ample Storage:** A basement **and attic** offer plenty of storage space, ensuring you have room for all your belongings.
- **Outdoor Space:** Enjoy the outdoors in the comfort of your own **backyard**, perfect for gardening, barbecues, or relaxation.

Property Description-Straight Up

- **Convenient Location:** Situated on Washington Ave, this property offers easy access to Albany's downtown amenities, including shops, restaurants, entertainment venues, and government buildings. It's also close to parks and public transportation options.
- **Off-Street Parking:** A dedicated off-street parking area provides convenience and peace of mind in this city setting.
- **Historical Significance:** If you appreciate history, you'll love being part of a neighborhood with a rich historical background and proximity to landmarks like the New York State Capitol.
- **Community:** Join a vibrant and welcoming community of residents who take pride in their historic surroundings and urban lifestyle.
- *Additional Information:*
- **Schools:** The property is within the Albany City School District, which offers a range of educational options for students of all ages.
- **Transportation:** Convenient access to major highways and public transportation makes commuting a breeze.
- **Utilities:** The property is equipped with modern utility services, including heating, cooling, and updated electrical systems.
- *Don't miss this opportunity to own a piece of Albany's history while enjoying the comfort of modern **living**. Contact us today to schedule a viewing and experience the charm and convenience of 130 Washington Ave for yourself.*

Property Description-John Grisham Style

In the quiet streets of Albany, New York, a hidden gem awaits your discovery at 130 Washington Avenue. This property, nestled in the heart of the historic city, is more than just bricks and mortar; it's a canvas for the vivid tales that unfold within its walls. Allow me, in the style of John Grisham, to unveil the secrets and allure of this remarkable residence.

As you approach this stately structure, its timeless elegance becomes apparent. A regal facade, adorned with intricately carved details, whispers of a past filled with both grandeur and mystery. The entrance, **flanked by ancient oaks**, promises sanctuary and refuge from the bustling world beyond.

Step inside, and you'll be transported to a world where secrets lurk in the shadows and intrigue fills the air. The foyer, resplendent with its **polished marble floors** and soaring ceilings, invites you to explore further. To the right, **an expansive living room bathed in the soft glow of sunlight filtering through silk curtains**, beckons you to unwind. It's a room where secrets are shared, alliances are forged, and where the undercurrent of suspense hangs palpably.

The dining room, with its dark oak paneling and flickering candlelight, sets the stage for clandestine meetings and whispered confidences. Imagine the clinking of glasses and hushed conversations as deals are brokered and alliances are sealed.

Moving through this enigmatic **residence**, you'll discover a **library lined with volumes of legal tomes and dusty case files**. It's a sanctuary for those who seek knowledge, power, and the means to shape the course of events. **Here, the echoes of countless legal battles resonate through the mahogany shelves, each book a testament to the pursuit of justice.**

Ascend the **grand staircase**, and you'll find the **master suite**—a haven of luxury and opulence. A sanctuary where rest is elusive and where the weight of the world can be momentarily shed. The **master bath, with its deep, claw-footed tub**, provides a refuge from the trials of the day, where secrets are pondered in the solitude of steam and scented oils.

Outside, a **meticulously landscaped garden** offers a peaceful respite from the intrigue within. A place where you can escape the machinations of the legal world and reflect upon the choices that brought you here.

130 Washington Avenue in Albany, New York, is not merely a property; it's a setting for the unfolding drama of human existence, a stage upon which the stories of power, intrigue, and suspense play out. It's a **residence** that captures the essence of a John Grisham novel, where the line between truth and fiction blurs, and where the pursuit of justice intertwines with the pursuit of one's desires. If you're ready to step into a world of mystery and allure, this property awaits your discovery.

Property Description-Beastie Boys Style

- (Verse 1) Well, listen up, y'all, here's the lowdown scoop, About a property in Albany that's straight up da bomb, it's true! 130 Washington Ave, where it's all going down, Let me break it to you smooth, don't you dare frown!
- (Chorus) This crib's got the flavor, it's got the style, It'll make you wanna stay here for quite a while. So kick back, relax, and let me narrate, The tale of this pad, it's gonna be great!
- (Verse 2) It's a three-story joint, brick and stone on the outside, A classic look, my friends, that'll fill you with pride. Step inside, and you'll be in for a treat, **Hardwood floors** shining, can't be beat!
- (Verse 3) The kitchen's got the stainless, the appliances all gleam, Cook up a storm, like you're in a foodie dream. Countertops so smooth, you'll wanna chop all day, Open concept **living**, where you can chill and play.
- (Chorus) This crib's got the flavor, it's got the style, It'll make you wanna stay here for quite a while. So kick back, relax, and let me narrate, The tale of this pad, it's gonna be great!
- (Verse 4) Upstairs you'll find the **bedrooms**, cozy and inviting, **Closets for days**, you'll never stop delighting. And when it's time to unwind, check out the backyard scene, A **garden oasis**, like you've never seen!
- (Bridge) In the heart of Albany, the location's just right, Close to everything, day and night. Bars, parks, and shops, all in the mix, This is the spot where you can get your kicks!
- (Chorus) This crib's got the flavor, it's got the style, It'll make you wanna stay here for quite a while. So kick back, relax, and let me narrate, The tale of this pad, it's gonna be great!
- (Outro) So there you have it, 130 Washington Ave, in the Beastie Boys way, A property that'll rock your world every day. If you want a slice of Albany living that's fine, This spot's the ill communication, it's a goldmine!

Use of AI Graphics in Advertisements

- If picture is not the same as property appears now:
 - Use of AI graphics must be disclosed clearly and conspicuously
 - If fixtures etc. are not there when closing happens, disclose it
 - Try not to use AI photos that show major structural changes
 - Include original photo

Use of AI Graphics to Show Potential to Clients

- What would a facelift do to a property
 - Glass, brick, etc.
- Interior planning
 - Offices, retail, dining, entertainment
- Interior structural changes
 - Be careful as AI is not an engineer
 - Instruct AI to show “open floor plan” may remove structural columns etc.

AI and Staging, Remodel Etc.



AI and Staging, Remodel Etc.



AI and Staging, Remodel Etc.



AI and Staging, Remodel Etc.



Use of AI-Potential Liability

- Do not use AI to draft legal documents
 - Unauthorized practice of law
 - Not drafted or reviewed by an attorney
 - Same as licensee hiring non-attorney to draft contract
 - Licensees who prepare simple fill-in-the-blank purchase and sale contract can avoid the unlawful practice of law by including in the contract a condition making it subject to approval by each party's attorney. Alternatively, brokers and salespersons can utilize a fill-in-the-blanks form that has been approved by a joint committee of the bar association and realtors association of his or her county. Such an approved form would only require that the licensees fill in non-legal provisions such as the names of the parties, the date and location of the closing, a description of the property, the consideration for sale and any other relevant facts.

Use of AI-Potential Liability

- Licensees are responsible for reviewing all AI produced content
- AI is still learning about Fair Housing/Human Rights Law
- Remember is AI is not perfect
- Copyright issues
 - AI draws its data from various sources some of which may be copyrighted
 - Test cases are beginning to make their way through the legal system

Recommendations

- If you haven't used AI yet, you really should try it
- Best way to learn is to experiment with various AI providers
- A useful tool to help you get started on a task
- A large number of 3rd party platforms utilize AI
- What works for one may not work for others

The Dark Side of AI

- AI can be used for criminal activity
- AI can convincingly recreate audio/video of individuals
- In March, the FTC warned of an increase in AI voice scams
- A recent study found that out of 7,000 people surveyed, one in four indicated they had experienced an AI voice scam or knew someone who had. The same study reported that 77% of those who received an AI voice call lost money.
- Remember caller ID can be spoofed

The Dark Side of AI

- AI has been used to create “deepfake” video on Zoom calls
- Criminals use AI to scour the web to find personal information on individuals to make the “deepfake” believable
- Hacking of email and an AI search of emails can be used to create a “personality” for the “deepfake” video victim similar to their own
- Responses would be similar to language used in emails or from publicly available video

Best Practices for Licensees

- Use a secondary means of identifying clients/customers
- If contacted by client/customer to perform something substantive, follow up with a text message or phone call to the known number
- Please verify that you instructed me to do XXXXXX by responding to this text

CEASE AND DESIST: BROOKLYN

Existing Cease and Desist Zone-Brooklyn 11/1/2020

The Zone created for Kings County includes the following area:

- *Beginning at the Queens border of Brooklyn to the east and the intersection of Jamaica Avenue to the north; thence westerly along Jamaica Avenue to Pennsylvania Avenue; thence southerly along Pennsylvania Avenue to Sutter Avenue; thence westerly on Sutter Avenue to Van Sinderen Avenue to the west; thence southerly along Van Sinderen Avenue to Linden Boulevard to the south; thence easterly along Linden Boulevard to the Queens border; thence northerly along the border to the point of the beginning on Jamaica Avenue.*

New Cease and Desist Zone-Brooklyn 7/1/2023

The Zone created for Kings County includes the following area:

- The sections of the area of land in the County of Kings, City of New York, within the neighborhood commonly referred to as Community Board 17, and more specifically bounded by and described as follows: Beginning at the intersection of Utica Avenue and Clarkson Avenue; thence westerly along Clarkson Avenue to East 43rd Street; thence southerly along East 43rd Street to Linden Boulevard; thence westerly along Linden Boulevard to Rogers Avenue; thence southerly along Rogers Avenue to Snyder Avenue; thence westerly along Snyder Avenue to Bedford Avenue; thence southerly along Bedford to Foster Avenue; thence easterly along Foster Avenue to New York Avenue; thence southerly along New York Avenue to Farragut Road; thence westerly along Farragut Road to East 32nd Street; thence southerly along East 32nd Street to Avenue H; thence easterly along Avenue H to Brooklyn Avenue; thence northerly along Brooklyn Avenue to Glenwood Road; thence easterly along Glenwood Road to Albany Avenue; thence northerly along Albany Avenue to Farragut Road; thence easterly along Farragut Road to Schenectady Avenue; thence northerly along Schenectady Avenue to Avenue D; thence easterly along Avenue D to Ditmas Avenue; thence continuing easterly along Ditmas Avenue to Rockaway Parkway, thence northwesterly along Rockaway Parkway to East New York Avenue; thence southwesterly along East New York Avenue to Utica Avenue; thence southerly along Utica Avenue to the point of the beginning at the intersection of Utica Avenue and Clarkson Avenue.*

NYS SALARY TRANSPARENCY

Labor Law 194-b

Effective September 17, 2023

Labor Law 194-b

1. a. No employer, employment agency, employee, or agent thereof shall advertise a job, promotion, or transfer opportunity that can or will be performed, at least in part, in the state of New York, without disclosing the following:
 - (i) the compensation or a range of compensation for such job, promotion, or transfer opportunity; and
 - (ii) the job description for such job, promotion, or transfer opportunity, if such description exists.
- b. An employer, employment agency, employee, or agent thereof advertising for a job, promotion, or transfer opportunity paid solely on commission shall maintain compliance with subparagraph (i) of paragraph a of this subdivision by disclosing a general statement that compensation shall be based on commission.

Labor Law 194-b

2. No employer shall refuse to interview, hire, promote, employ or otherwise retaliate against an applicant or current employee for exercising any rights under this section.
3. The commissioner shall promulgate rules and regulations to effectuate the provisions of this section.
4. The department shall conduct a public awareness outreach campaign, which shall include making information available on its website and otherwise informing employers of the provisions of this section.

Labor Law 194-b

5.
 - a. Any person claiming to be aggrieved by a violation of this section may file with the commissioner a complaint regarding such alleged violation for an investigation of such complaint and statement setting the appropriate remedy, if any, pursuant to the provisions of section one hundred ninety-six-a of this article.
 - b. An employer who fails to comply with any requirement of this section or any regulation published thereunder shall be deemed in violation of this section and shall be subject to a civil penalty in accordance with section two hundred eighteen of this chapter.

Labor Law 194-b

6. For the purposes of this section the following terms shall have the following meanings:

a. “range of compensation” shall mean the minimum and maximum annual salary or hourly range of compensation for a job, promotion, or transfer opportunity that the employer in good faith believes to be accurate at the time of the posting of an advertisement for such opportunity.

Labor Law 194-b

b. “employer” shall mean:

(i) any person, corporation, limited liability company, association, labor organization or entity employing four or more employees in any occupation, industry, trade, business or service, or any agent thereof; and

(ii) any person, corporation, limited liability company, association or entity acting as an employment agent or recruiter, or otherwise connecting applicants with employers, provided that “employer” shall not include a temporary help firm as such term is defined by subdivision five of section nine hundred sixteen of this chapter.

c. “advertise” shall mean to make available to a pool of potential applicants for internal or public viewing, including electronically, a written description of an employment opportunity.

7. The provisions of this section shall not be construed or interpreted to supersede or preempt any provisions of local law, rules, or regulations.

Labor Law 194-b

The Dept. of Labor has published proposed regulations on September 13, 2023. NYSAR will address providing comments during the FBM.

Labor Law 194-b

Who is covered:

- Office Manager
- Office Staff
- Personal Assistants
- Non IC agents

Labor Law 194-b

Who might be covered:

- IC agents

Labor Law 194-b

What about agents:

The proposed regulations do not address IC.

Labor Law 194-b

Until guidance as to IC is provided, brokers should include a statement complying with 1(b) of the law.

Labor Law 194-b

b. An employer, employment agency, employee, or agent thereof advertising for a job, promotion, or transfer opportunity paid solely on commission shall maintain compliance with subparagraph (i) of paragraph a of this subdivision by disclosing a general statement that compensation shall be based on commission.

Labor Law 194-b

Real estate agents wanted.
Compensation is based on
commissions only.

Spindrift Realty

Call 518-555-2112

AMENDMENTS TO LABOR LAW

Labor Law 590(2)

Effective November 13th

Labor Law 590(2)

- 2. Notice of eligibility upon separation from employment. Every employer liable under this article for contributions shall inform each employee of their right to file an application for unemployment benefits with the department. Such information shall be given at the time of each permanent or indefinite separation from employment, reduction in hours, temporary separation, and any other interruption of continued employment that results in total or partial unemployment. Such notice shall be given in writing on a form furnished or approved by the department and shall include: **(a)** the employer's name and registration number; **(b)** the address of the employer to which a request for remuneration and employment information with respect to such employee must be directed; and **(c)** such other information as is required by the commissioner.

Labor Law 201-i

Effective March 12, 2024

Labor Law 201-i

- 2. (a) Except as provided in paragraph (b) of this subdivision, it shall be unlawful for any employer to request, require or coerce any employee or applicant for employment to:(i) disclose any user name and password, password, or other authentication information for accessing a personal account through an electronic communications device; (ii) access the employee's or applicant's personal account in the presence of the employer; or (iii) reproduce in any manner photographs, video, or other information contained within a personal account obtained by the means prohibited in this paragraph.

Labor Law 201-i

- 2 (b) An employer may require an employee to disclose any user name, password or other means for accessing nonpersonal accounts that provide access to the employer's internal computer or information systems.
- (c) For the purposes of this section, "access" shall not include an employee or applicant voluntarily adding an employer, agent of the employer, or employment agency to their list of contacts associated with a personal internet account.

Labor Law 201-i

- 3. An employer may not:
 - (a) Discharge, discipline, or otherwise penalize or threaten to discharge, discipline, or otherwise penalize an employee for an employee's refusal to disclose any information specified in paragraph (a) of subdivision two of this section; or
 - (b) Fail or refuse to hire any applicant as a result of the applicant's refusal to disclose any information specified in paragraph (a) of subdivision two of this section.

Labor Law 201-i

- 5. (a) Nothing in this section shall prohibit an employer from:
 - (i) requesting or requiring an employee to disclose access information to an account provided by the employer where such account is used for business purposes and the employee was provided prior notice of the employer's right to request or require such access information;
 - (ii) requesting or requiring an employee to disclose access information to an account known to an employer to be used for business purposes;
 - (iii) accessing an electronic communications device paid for in whole or in part by the employer where the provision of or payment for such electronic communications device was conditioned on the employer's right to access such device and the employee was provided prior notice of and explicitly agreed to such conditions. However, nothing in this subparagraph shall permit an employer to access any personal accounts on such device;
 - (iv) complying with a court order in obtaining or providing information from, or access to, an employee's accounts as such court order may require;

Labor Law 201-i

- 5. (c) This section does not prohibit or restrict an employer from viewing, accessing, or utilizing information about an employee or applicant that can be obtained without any required access information, that is available in the public domain, or for the purposes of obtaining reports of misconduct or investigating misconduct, photographs, video, messages, or other information that is voluntarily shared by an employee, client, or other third party that the employee subject to such report or investigation has voluntarily given access to contained within such employee's personal account.

NAR LAWSUITS

What Are They?

- Two different lawsuits: Sitzer/Burnett and Moehrl
- The lawsuits claim that NAR rules violate antitrust laws and inflate the fees paid to buyer's agents by requiring a listing agent to compensate a buyer's agent for listing a property on the MLS.
- Trial to begin later this month
- Regardless of outcome, there will be an appeal
- Settlements by brokers and MLS should not be viewed as a concession that the plaintiffs will prevail

What Could it Mean for Brokerages

- Worst case scenario-prohibiting cooperating compensation to buyers
- Best case scenario-we continue practicing as we are now

What is Happening Now

- MLS are now allowing 0% compensation to buyer agents on listings
- Buyer agents must now discuss compensation during first substantive contact
- Commission agreement should be agreed to prior to entering into a buyer agency relationship
- Do not wait until buyer wants to submit offer to discuss commissions
- Failure to discuss may lead to buyer agent not be compensated and suing the buyer under “unjust enrichment” theory

What Should We Do

- Use of an Exclusive Right to Represent/Buyer Broker Agreement (ERTR) should become a standard practice
- Brokers need to review their NYS SOP if they want to mandate ERTR
- Brokers may also use a non-exclusive commission agreement without amending their SOP
- Brokers should educate their associated licensees as to the different ways in which buyer agents can collect commissions

What Should We Do

- Listing agents offer cooperating compensation to buyer agents
- Buyer agrees to include compensation to buyer agent in purchase offer
- Buyer agrees to compensate buyer agent themselves

In the Meantime...

- NYSAR is working closely with REBNY to determine the impact on NY broker practices
- Drafting a non-exclusive commission agreement for buyer agents
- Educate membership if the court rules in favor of the plaintiffs
- Until the court issues a decision, we won't know what we will or will not be able to do

COURT/DOS DECISIONS

CC v SC

- CC-broker
- SC-seller
- Action for commissions on the sale

CC v SC

- CC and SC entered into an exclusive listing agreement (LA)
- LA stated that broker not entitled to commission unless closing
- SC entered into a contract to sell property
- Closing never occurred
- Pursuant to LA, CC ceased acting as broker for SC in 5/2015
- Protection period in LA ended 12/2015

CC v SC

- SC retained a new broker
- New offer was \$200,000 higher with different terms under a new broker
- Property closed 7/2016
- CC sued for commissions

CC v SC

- After LA term ended, CC's right to earn a commission could only be based upon procuring a buyer who was "ready, willing and able to purchase at the terms set by the seller"
- CC was unable to show that it was the procuring cause of the sale.

CC v SC

- CC argued that SC acted in bad faith but failed to allege the same in the motion
- The only cause of action on the motion was the one for breach of contract. Accordingly, we do not reach plaintiff's argument regarding defendant's purported bad faith.
- CC was not entitled to any commission

C v T

- C-broker
- T-landlord
- T entered into an exclusive agreement with C to find tenants
- 6 month agreement expiring 3/15/2015 unless extended in writing
- C entitled to commission when tenant entered binding lease with T
- C sues T for commission

C v T

- C claims to have produced fully executed lease
- T did not pay commission
- Lower court awarded C commission of \$82,390
- T appeals

C v T

- Appellate court found that lower court decision was not supported by the record
- LA expired 3/15/2015
- Employee of C testified the lease was not signed until 12/2015
- Employee of T testified lease was signed 12/7/2015
- C had provision in LA that commission could be collected after expiration if negotiations continued and lease was signed
- C had to provide list of potential tenants to T within 10 days after expiration of LA. C provided no such list.

C v T

- Appellate court reversed lower court decision
- C did not provide a list that named the tenant who ultimately signed the lease on 12/7/2015
- C not entitled to commission for failure to provide list to T