

2024

Legal Update



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

2024 Dates

July 23

August 20

September 10

October 22

November 19

December 17

How to Register

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

NYSAR STATEWIDE FORMS

Forms

- Exclusive Buyer Agency Compensation Agreement-amended
 - f/k/a Exclusive Right to Sell
- Non-Exclusive Buyer Agency Compensation Agreement-new
- Exclusive Right to Sell-amended
- Cooperating Broker Compensation Agreement with Listing Broker-new
- Cooperating Broker Compensation Agreement with Seller-new

Forms

- Current forms have been amended to comply with settlement
- New forms were published to comply with settlement
- Forms released on 7/1/2024
- NYSAR provided a guide to filling out the forms
- NYSAR will be providing video series on using the forms

Exclusive Buyer Agency Compensation Agreement-amended

- Inclusion of required disclosure of compensation

_____/_____
PLEASE INITIAL: Compensation is not set by law or any Realtor®
association or MLS and that compensation to BROKER is fully negotiable
between the BUYER and the BROKER.

Exclusive Buyer Agency Compensation Agreement-amended

BUYER agrees that the BROKER shall receive compensation if BUYER or any other person acting on BUYER's behalf buys, exchanges for, obtains an option on, or leases real property located and/or shown by the BROKER to the BUYER. BUYER agrees that BROKER shall be compensated \$ _____ or _____% of the purchase price of the property or _____% of the aggregate rental of the Lease and all options as exercised or \$ _____, which sum shall become due and payable when BROKER brings about a meeting of the minds between BUYER and the seller/lessor. BROKER is authorized to have the agreed upon compensation paid by the Seller or the Listing Broker under the Purchase Agreement or otherwise except as set forth in section 4(c) or 4(d). However, to the extent that the agreed upon compensation is not paid to BROKER by the Seller or the Listing Broker, BUYER shall be fully responsible to BROKER for the difference between the agreed upon compensation and any amount received by BROKER from the Seller and/or Listing Broker. If BUYER and BROKER agree to dual agency or dual agency with designated sales agents (see section 4(c) and 4(d)), the BUYER shall be responsible for compensating the BROKER the full amount set forth above. BROKER may not receive compensation from any source that exceeds the amount or rate agreed to with the BUYER unless the BROKER and BUYER have agreed to the additional compensation in writing.

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4. IN-HOUSE SALES If BUYER expresses interest in property owned by a seller who has an agency relationship with BROKER ["seller's broker"], a conflict has arisen. The BROKER shall immediately advise both the BUYER client and seller client of the pertinent facts including the fact that a dual agency situation has arisen, and that the following options are available:

a. BROKER and BUYER could dissolve their agency relationship. BUYER may then seek to retain another broker, and/or an attorney, or may represent themselves. This would release BUYER from their obligations under this AGREEMENT for that property only. BROKER may continue to act as Agent for Seller.

b. BROKER and seller could dissolve their agency relationship. The seller may then seek to retain another broker, and/or an attorney, or may represent (her)himself. This would release the seller from any listing agreement which was entered into with BROKER. BROKER may continue to act as agent for BUYER.

For transactions where the BUYER chooses (a) or (b), the brokerage compensation will be paid by the seller in accordance with the listing agreement with the seller, unless different arrangements have been agreed upon. Compensation or fees owed under this AGREEMENT are not applicable in scenario a or b above as this AGREEMENT would not be in effect for any representation other than Buyer Agency, Dual Agency or Dual Agency with Designated Sales Agent. The BUYER, seller and BROKER shall memorialize the option of their mutual choice by executing a statutory agency disclosure notice. If there is no mutual agreement, the proposed transaction between BUYER and seller shall not be pursued.

c. With fully informed consent, BUYER and seller may elect to continue with the brokerage firm serving as a consensual dual agent which is the exception to the general rule that agents serve one principal. In dual agency, the BROKER and its agents have a duty of fairness to both the BUYER and seller. As a dual agent, the firm and its agents cannot furnish undivided loyalty to either party. As a dual agent, the firm and its licensee agents have a duty not to disclose confidential information given by one principal to the other principal, such as the price one is willing to pay or accept. Such information may already be known to the firm and its agents. If the information is of such a nature that the agent cannot fairly give advice without disclosing it, the agent cannot properly continue to act as an agent.

d. With fully informed consent, BUYER and seller may elect to continue with the brokerage firm serving as a consensual dual agent with designated sales agents. The BROKER of the firm will be a dual agent and the seller and BUYER will have different agents of the firm advocate on their behalf. The designated sales agent for the BUYER will function as the buyer's agent representing the interests of and advocating on behalf of the BUYER and the designated sales agent for the seller will function as the seller's agent representing the interests of and advocating on behalf of the seller in the negotiations between the BUYER and seller. A designated sales agent cannot provide the full range of fiduciary duties to the BUYER or seller. The designated sales agent must explain that like the dual agent under whose supervision they function, they cannot provide undivided loyalty.

For transactions where the BUYER and BROKER agree to Dual Agency or Dual Agency with Designated Sales Agent, the BUYER and BROKER agree that the BUYER will be obligated to compensate the BROKER the full amount of compensation pursuant to section 1 of this agreement as the BROKER may not request compensation from the seller or listing broker.

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Dispute Resolution-Mediation/Arbitration

10. DISPUTE RESOLUTION:

- a. The parties agree that any dispute concerning the terms and conditions of this Agreement that cannot be amicably resolved between them shall first be submitted to mediation proceedings conducted in accordance with the rules of the National Association of Realtors® and the local Realtor® association – or, if that association does not provide for mediation, by a mediator mutually agreed upon by the parties. Mediation fees and costs, if any, shall be divided equally among the parties involved.
- b. If the dispute is not timely resolved through mediation, either party may submit the dispute to binding arbitration before the local Realtor® association in accordance with the procedure set forth in the National Association of Realtors® Code of Ethics and Arbitration Manual. Each party shall bear its own fees and costs, and the fees of the arbitration.
- c. The parties agree that arbitration as set forth above shall be the exclusive procedure for resolution of all disputes that cannot be resolved through mediation. Each party hereby waives the right to bring any lawsuit relating to any transaction covered by this Agreement and further waives the right to join, or be part of, any class action or any other legal action relating to claims arising from any such transaction.
- d. Notwithstanding any provision to the contrary contained in this Agreement, if Broker is held to be liable for any matter arising from this Agreement, the maximum liability of Broker shall not exceed the aggregate amount received by Broker in connection with the transaction in question, not including filing or related administrative fees.

Dispute Resolution-Arbitration NARCOEAM

- **Appendix V to Part Ten**
- **(7) Board's right to decline arbitration.** The Board should be aware of its right to decline to arbitrate a dispute between members or between members and nonmembers. If either the Grievance Committee or the arbitration Hearing Panel determines that the matter should not be arbitrated because of the amount involved (too little or too much), or because of the legal complexity of the matter, the arbitration automatically terminates unless either of the parties appeals the decision to the Board of Directors within twenty (20) days of the date of the notice of the Grievance Committee's or arbitration Hearing Panel's decision using Form #A-20, Appeal of Grievance Committee Dismissal or Classification of Arbitration Request; however, no additional information may be added or attached to the form. The Hearing Panel can also dismiss the arbitration request if the Hearing Panel concludes the matter is not arbitrable. If the Board declines to arbitrate the matter, any deposits shall be returned to the parties. If the Board of Directors decides that arbitration should proceed, the matter is remanded to the Grievance Committee or arbitration Hearing Panel for further processing. *(Amended 5/97)*

Non-Exclusive Buyer Agency Compensation Agreement-New

- New form
- Not every buyer will want to sign an exclusive agreement
- Similar to the Exclusive Buyer Agency Compensation Agreement
- Unlike the exclusive agreement, this would only be applicable to properties that were “located or shown” to the buyer by the broker
- Form provides spaces to fill in property addresses
- Required compensation disclosure and dispute resolution section is the same as the exclusive

Non-Exclusive Buyer Agency Compensation Agreement-New

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NYS Broker SOP Law and the use of Written Agreements

- NYS law requires brokers to post their SOP on their website etc.
- Many brokers have been asking how the settlement impacts the SOP law
- There is no change in how the SOP law is applied
- The SOP law applies only to “whether an **exclusive broker agreement** is required”
- Unless the broker now requires an exclusive, there is no need to amend the SOP
- Non-exclusive buyer broker agreements are not covered under the SOP law
- Nothing prevents a broker from adding it to their SOP, but it is not required

Exclusive Right to Sell-Amended

- Amended to comply with settlement
- Any reference to required cooperating compensation removed
- Required compensation disclosure included and expanded
- Compensation section replaced
- Cooperating compensation section added
- Dispute resolution section is the same as the other forms

Exclusive Right to Sell-Amended

9. ____/____ PLEASE INITIAL: SELLER understands that compensation is not set by law or any Realtor® association or MLS and that compensation is fully negotiable between the SELLER and the LISTING BROKER. **An offer of compensation to the COOPERATING BROKER who produces the buyer for the listed property is not required.** However, SELLER may choose to offer compensation directly to the COOPERATING BROKER or through the LISTING BROKER to the COOPERATING BROKER. A SELLER may receive requests for compensation from a COOPERATING BROKER as part of the purchase offer or separately. The SELLER has the right to accept, deny or negotiate the amount of compensation being requested by the COOPERATING BROKER

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Exclusive Right to Sell-Amended

(A) LISTING BROKER COMPENSATION.

SELLER shall pay the LISTING BROKER compensation of _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing whichever is the greater sum unless otherwise modified in paragraph 9(B).

In the event of dual agency, dual agency with designated sales agent or an unrepresented buyer, SELLER shall pay the LISTING BROKER compensation of _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing whichever is the greater sum. (for an explanation of the types of agency, please see the NYS Agency Disclosure Form).

Said total compensation shall be earned and payable under any of the following conditions: (a) If the LISTING BROKER or COOPERATING BROKER produces a buyer ready, willing and able to purchase the PROPERTY on such terms and conditions acceptable to the SELLER; (b) If through the LISTING BROKER or COOPERATING BROKER's efforts a buyer and the SELLER reach an agreement upon all the essential terms of a transaction; (c) If the PROPERTY is sold or rented during the term of this LISTING AGREEMENT whether or not the sale or rental is a result of the LISTING BROKER'S efforts and even if the PROPERTY is sold as a result of the efforts of the SELLER or any other broker or agent not acting under this LISTING AGREEMENT; (d) If the LISTING BROKER or COOPERATING BROKER is the procuring cause of a transaction. If within _____ days after the expiration of the LISTING PERIOD, SELLER accepts a purchase offer on the PROPERTY from any person to whom the PROPERTY has been shown during the LISTING PERIOD, SELLER will pay LISTING BROKER the aforementioned compensation as if LISTING BROKER had made the sale provided the PROPERTY goes to closing. The preceding sentence shall not apply if during said period, SELLER lists the PROPERTY with another real estate broker.

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SELLER shall pay the LISTING BROKER compensation of _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing whichever is the greater sum unless otherwise modified in paragraph 9(B).

In the event of dual agency, dual agency with designated sales agent or an unrepresented buyer, SELLER shall pay the LISTING BROKER compensation of _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing whichever is the greater sum. (for an explanation of the types of agency, please see the NYS Agency Disclosure Form).

Said total compensation shall be earned and payable under any of the following conditions: (a) If the LISTING BROKER or COOPERATING BROKER produces a buyer ready, willing and able to purchase the PROPERTY on such terms and conditions acceptable to the SELLER; (b) If through the LISTING BROKER or COOPERATING BROKER's efforts a buyer and the SELLER reach an agreement upon all the essential terms of a transaction; (c) If the PROPERTY is sold or rented during the term of this LISTING AGREEMENT whether or not the sale or rental is a result of the LISTING BROKER'S efforts and even if the PROPERTY is sold as a result of the efforts of the SELLER or any other broker or agent not acting under this LISTING AGREEMENT; (d) If the LISTING BROKER or COOPERATING BROKER is the procuring cause of a transaction. If within _____ days after the expiration of the LISTING PERIOD, SELLER accepts a purchase offer on the PROPERTY from any person to whom the PROPERTY has been shown during the LISTING PERIOD, SELLER will pay LISTING BROKER the aforementioned compensation as if LISTING BROKER had made the sale provided the PROPERTY goes to closing. The preceding sentence shall not apply if during said period, SELLER lists the PROPERTY with another real estate broker.

Exclusive Right to Sell-Amended

(A) LISTING BROKER COMPENSATION.

SELLER shall pay the LISTING BROKER compensation of _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing whichever is the greater sum unless otherwise modified in paragraph 9(B).

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Exclusive Right to Sell-Amended

(B) COOPERATING COMPENSATION (please initial one below)

____/____ PLEASE INITIAL: SELLER **IS NOT** offering compensation to COOPERATING BROKERS (*please continue to part C of this section*)

SELLER **IS** offering compensation to COOPERATING BROKERS (*please initial one of the following and fill in paragraph below*):

____/____ SELLER is offering compensation directly to COOPERATING BROKERS

____/____ SELLER is authorizing LISTING BROKER to offer cooperating compensation to COOPERATING BROKER

In addition to the compensation offered to the LISTING BROKER under paragraph 9(A), SELLER will offer compensation to COOPERATING BROKERS directly or through the LISTING BROKER, as SELLER has indicated above, who is the procuring cause of the PROPERTY sale/transfer during the LISTING PERIOD as set forth in paragraph 9(A). SELLER agrees to the following offers of compensation to COOPERATING BROKERS:

BUYER'S AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

BROKER'S AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

SUB AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

(for an explanation of the types of agency, please see the NYS Agency Disclosure Form).

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BROKER'S AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

SUB AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

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BUYER'S AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

BROKER'S AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

SUB AGENT: _____ percent (%) of the selling price or a fee of _____ dollars (\$) at closing;

(for an explanation of the types of agency, please see the NYS Agency Disclosure Form).

Exclusive Right to Sell-Amended

10. ____/____ PLEASE INITIAL Seller Concessions. SELLER agrees to pay a fixed amount or percentage of the Purchase Price at Closing, toward buyer's loan closing fees, prepaid expenses, and/or other permitted closing costs to be paid by buyer or which are ordinarily deemed a buyer's expense.

Cooperating Broker Compensation Agreement with Seller-New

- New form
- Buyer broker must be authorized by buyer to be compensated by seller
- Used when seller agrees to pay compensation to cooperating broker directly
- Buyer broker can also use form to request compensation from seller
 - May be provided to listing broker directly
 - May be included as part of purchase offer
- Seller is permitted to compensate sub agent and broker agent
- Licensee must be authorized by seller to act as sub agent or broker agent (contact listing broker)
- Licensees acting as sub agent or broker agent may not request additional compensation from seller
- Dispute resolution section is the same as other forms

Cooperating Broker Compensation Agreement with Seller-New

The COOPERATING BROKER is acting as a:

_____ BUYER'S AGENT

SELLER understands that COOPERATING BROKER is acting as a BUYER'S AGENT acting in the best interest of the BUYER(S), the COOPERATING BROKER is not representing SELLER. COOPERATING BROKER has been authorized by the BUYER to receive the cooperating compensation set forth below from the LISTING BROKER.

_____ SUB-AGENT

SELLER understands that the COOPERATING BROKER is acting as a SELLER'S AGENT acting in the best interest of the SELLER.

_____ BROKER'S AGENT

SELLER understands that the COOPERATING BROKER is acting as a BROKER'S AGENT acting in the best interest of the LISTING BROKER.

Cooperating Broker Compensation Agreement with Seller-New

SELLER understands that this Contract is only a compensation agreement for selling SELLER'S Property to the aforementioned prospective BUYER. SELLER is not listing SELLER'S Property with COOPERATING BROKER. SELLER understands that SELLER can sell SELLER'S Property to other buyers even though this Contract has not expired. This agreement does not authorize COOPERATING BROKER to show the property to any other prospective BUYERS, nor obligate SELLER to pay compensation to COOPERATING BROKER, except in connection with a sale of the property to this BUYER.

Cooperating Broker Compensation Agreement with Seller-New

_____/_____
PLEASE INITIAL: COMPENSATION: SELLER understands that compensation is not set by law or any Realtor® association or MLS and that compensation is fully negotiable between the SELLER and the COOPERATING BROKER.

Cooperating Broker Compensation Agreement with Seller-New

The undersigned SELLER agree(s) to pay to the undersigned COOPERATING BROKER, compensation in an amount equal to _____% of the sales price or \$ _____ for the sale of the above described property shown to the BUYER(S), if a contract is ratified between the parties within _____ days of showing. Such compensation shall be paid at closing.

Cooperating Broker Compensation Agreement with Listing Broker-New

- New form
- Compensation disclosure (negotiable) is not required as it is not a consumer form
- Form replaces “contract” that was formed through MLS participation and offer of cooperating compensation
- Used when seller agrees to pay compensation to cooperating broker through listing broker
- Buyer broker must be authorized by buyer to be compensated by listing broker
- Buyer broker must contact listing broker to inquire if there is an offer of cooperating compensation
- Buyer broker should not use form unless confirming listing broker is offering cooperating compensation
- Seller is permitted to compensate sub agent and broker agent through listing broker
- Licensee must be authorized by seller to act as sub agent or broker agent (contact listing broker)
- Licensees acting as sub agent or broker agent may not request additional compensation from seller
- Dispute resolution section is different from other forms and based on Article 17 of the Code of Ethics.

Cooperating Broker Compensation Agreement with Listing Broker-New

The LISTING BROKER has been authorized by the SELLER to offer the COOPERATING COMPENSATION listed below to the COOPERATING BROKER.

The COOPERATING BROKER is acting as a:

_____ BUYER'S AGENT

_____ SUB-AGENT

_____ BROKER'S AGENT

Cooperating Broker Compensation Agreement with Listing Broker-New

The LISTING BROKER and COOPERATING BROKER understand that this Contract is only a COOPERATING COMPENSATION agreement for selling SELLER'S PROPERTY to the aforementioned prospective BUYER.

Cooperating Broker Compensation Agreement with Listing Broker-New

COOPERATING COMPENSATION: The undersigned LISTING BROKER agrees to pay to the undersigned COOPERATING BROKER, compensation in an amount equal to _____% of the sales price or \$ _____ for the sale of the above described property to the BUYER(S), if a contract is ratified between the parties within _____ days of showing. Such compensation shall be paid at closing.

Cooperating Broker Compensation Agreement with Listing Broker-New

Dispute Resolution: The parties agree that any dispute concerning the terms and conditions of this Agreement that cannot be amicably resolved between them shall first be submitted to mediation proceedings conducted in accordance with the rules of the National Association of Realtors® and the local Realtor® association – or, if the dispute is not timely resolved through mediation or the local Realtor association does not offer mediation, by arbitration in accordance with the Code of Ethics and Arbitration Manual of the National Association of Realtors® and the local Realtor® association.

NYS FREELANCER LAW

Freelancer Law

The law as passed was
amended and moved

Freelancer Law

Originally Effective

May 20, 2024

Freelancer Law

Now Effective
August 28, 2024

Freelancer General Business Law §1410

Definitions:

(3) "FREELANCE WORKER" MEANS ANY NATURAL PERSON OR ORGANIZATION COMPOSED OF NO MORE THAN ONE NATURAL PERSON, WHETHER OR NOT INCORPORATED OR EMPLOYING A TRADE NAME, THAT IS HIRED OR RETAINED AS AN INDEPENDENT CONTRACTOR BY A HIRING PARTY TO PROVIDE SERVICES IN EXCHANGE FOR AN AMOUNT EQUAL TO OR GREATER THAN EIGHT HUNDRED DOLLARS, EITHER BY ITSELF OR WHEN AGGREGATED WITH ALL CONTRACTS FOR SERVICES BETWEEN THE SAME HIRING PARTY AND FREELANCE WORKER DURING THE IMMEDIATELY PRECEDING ONE HUNDRED TWENTY DAYS

(4) "HIRING PARTY" MEANS ANY PERSON WHO RETAINS A FREELANCE WORKER TO PROVIDE ANY SERVICE

Freelancer General Business Law 1410

"FREELANCE WORKER" is any licensee associated with a real estate brokerage as an independent contractor

"HIRING PARTY" is the broker or brokerage

Freelancer General Business Law 1411

(1) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE CONTRACTED COMPENSATION SHALL BE PAID TO A FREELANCE WORKER EITHER:

**(a) ON OR BEFORE THE DATE SUCH COMPENSATION IS DUE UNDER THE TERMS OF THE CONTRACT;
OR**

(b) IF THE CONTRACT DOES NOT SPECIFY WHEN THE HIRING PARTY MUST PAY THE CONTRACTED COMPENSATION OR THE MECHANISM BY WHICH SUCH DATE WILL BE DETERMINED, NO LATER THAN THIRTY DAYS AFTER THE COMPLETION OF THE FREELANCE WORKER'S SERVICES UNDER THE CONTRACT.

(2) ONCE A FREELANCE WORKER HAS COMMENCED PERFORMANCE OF THE SERVICES UNDER THE CONTRACT, THE HIRING PARTY SHALL NOT REQUIRE AS A CONDITION OF TIMELY PAYMENT THAT THE FREELANCE WORKER ACCEPT LESS COMPENSATION THAN THE AMOUNT OF THE CONTRACTED COMPENSATION.

Freelancer General Business Law 1412

(A) WHENEVER A HIRING PARTY RETAINS THE SERVICES OF A FREELANCE WORKER, AS SUCH TERMS ARE DEFINED IN THIS SECTION, THE CONTRACT BETWEEN SUCH PARTY AND WORKER SHALL BE REDUCED TO WRITING. THE HIRING PARTY MUST FURNISH A COPY OF SUCH WRITTEN CONTRACT, EITHER PHYSICALLY OR ELECTRONICALLY, TO THE FREELANCE WORKER AND EACH PARTY TO THE WRITTEN CONTRACT SHALL RETAIN A COPY THEREOF.

Freelancer General Business Law 1412

(2) THE WRITTEN CONTRACT SHALL INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:

(a) THE NAME AND MAILING ADDRESS OF BOTH THE HIRING PARTY AND THE FREELANCE WORKER;

(b) AN ITEMIZATION OF ALL SERVICES TO BE PROVIDED BY THE FREELANCE WORKER, THE VALUE OF THE SERVICES TO BE PROVIDED PURSUANT TO THE CONTRACT, AND THE RATE AND METHOD OF COMPENSATION;

(c) THE DATE ON WHICH THE HIRING PARTY MUST PAY THE CONTRACTED COMPENSATION OR THE MECHANISM BY WHICH SUCH DATE WILL BE DETERMINED; AND

(d) THE DATE BY WHICH A FREELANCE WORKER MUST SUBMIT A LIST OF SERVICES RENDERED UNDER SUCH CONTRACT TO THE HIRING PARTY IN ORDER TO MEET ANY INTERNAL PROCESSING DEADLINES OF SUCH HIRING PARTY FOR THE PURPOSES OF COMPENSATION BEING TIMELY RENDERED BY THE AGREED-UPON DATE AS STIPULATED IN SUBPARAGRAPH (c) OF THIS SUBDIVISION.

Freelancer General Business Law

- (3) SUCH HIRING PARTY SHALL BE REQUIRED TO KEEP SUCH CONTRACT FOR A PERIOD OF NO LESS THAN SIX YEARS AND SHALL MAKE SUCH CONTRACT AVAILABLE TO THE COMMISSIONER UPON REQUEST. THE FAILURE OF A HIRING PARTY TO PRODUCE SUCH CONTRACT, UPON REQUEST OF THE COMMISSIONER, SHALL GIVE RISE TO A PRESUMPTION THAT THE TERMS THAT THE FREELANCE WORKER HAS PRESENTED ARE THE AGREED UPON TERMS.

Freelancer General Business Law 1412

(4) THE COMMISSIONER SHALL MAKE AVAILABLE MODEL CONTRACTS ON THE WEBSITE OF THE DEPARTMENT FOR USE BY THE GENERAL PUBLIC AT NO COST. SUCH MODEL CONTRACTS SHALL BE MADE AVAILABLE IN ENGLISH AND IN THE TWELVE LANGUAGES MOST COMMONLY SPOKEN BY LIMITED ENGLISH PROFICIENT INDIVIDUALS IN THE STATE.

Freelancer General Business Law 1413

NO HIRING PARTY, AS DEFINED IN THIS SECTION, SHALL THREATEN, INTIMIDATE, DISCIPLINE, HARASS, DENY A WORK OPPORTUNITY TO, OR DISCRIMINATE AGAINST A FREELANCE WORKER, OR TAKE ANY OTHER ACTION THAT PENALIZES A FREELANCE WORKER FOR, OR IS REASONABLY LIKELY TO DETER A FREELANCE WORKER FROM, EXERCISING OR ATTEMPTING TO EXERCISE ANY RIGHT GUARANTEED UNDER THIS ARTICLE, OR FROM OBTAINING ANY FUTURE WORK OPPORTUNITY BECAUSE THE FREELANCE WORKER HAS DONE SO.

Contracted Compensation

1411

(1) EXCEPT AS OTHERWISE PROVIDED BY LAW, THE CONTRACTED COMPENSATION SHALL BE PAID TO A FREELANCE WORKER EITHER:

(a) ON OR BEFORE THE DATE SUCH COMPENSATION IS DUE UNDER THE TERMS OF THE CONTRACT; OR

(b) IF THE CONTRACT DOES NOT SPECIFY WHEN THE HIRING PARTY MUST PAY THE CONTRACTED COMPENSATION OR THE MECHANISM BY WHICH SUCH DATE WILL BE DETERMINED, NO LATER THAN THIRTY DAYS AFTER THE COMPLETION OF THE FREELANCE WORKER'S SERVICES UNDER THE CONTRACT.

Terms of Contract

- (a) ON OR BEFORE THE DATE SUCH COMPENSATION IS DUE UNDER THE TERMS OF THE CONTRACT;
- The contract could state that the licensee would be entitled to compensation within XXX days of the brokers receipt of commission.
- If no time frame is set forth then within 30 days after closing
- If the broker never receives the commission, then section II may be applicable

Terms of Contract

- **(2) ONCE A FREELANCE WORKER HAS COMMENCED PERFORMANCE OF THE SERVICES UNDER THE CONTRACT, THE HIRING PARTY SHALL NOT REQUIRE AS A CONDITION OF TIMELY PAYMENT THAT THE FREELANCE WORKER ACCEPT LESS COMPENSATION THAN THE AMOUNT OF THE CONTRACTED COMPENSATION.**

Now What?

How do brokers comply with the new provisions of the General Business Law?

NYSAR Independent Contractor Agreement

- NYSAR has drafted a new independent contractor agreement to comply with the new law
- The new agreement will be posted to NYSAR.com in late July/early August

NYSAR Independent Contractor Agreement

- WHEREAS, Sales Associate and Broker are each respectively duly licensed pursuant to Article 12-A of the Real Property Law of the State of New York, and WHEREAS, the parties hereto have freely and voluntarily entered into this Agreement, without duress. Paragraphs 14-17 are included to comply with New York State General Business Law Article 44-A (“Freelance Isn’t Free Act) and New York City Administrative Code Title 20: Consumer Affairs, Chapter 10: Freelance Workers (FIFA).

NYSAR Independent Contractor Agreement

14. The Sales Associate will provide the following services for the Broker:

lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan, as defined in §590 of the Banking Law, or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocater, as defined in §590 of the Real Property Law or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the General Business Law governing real estate syndication offerings. In the sale of lots pursuant to the provisions of article 9-A of the Real Property Law employed by or on behalf of the owner or owners of lots or other parcels of real estate, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate.

NYSAR Independent Contractor Agreement

15. Sales Associate shall be paid a commission on Sales Associates sales, if any, without deduction for taxes, which commission shall be directly related to sales or other output. Such commission shall be paid when the Sales Associate is the “procuring cause” of the transaction. A Broker must provide the date by which a Sales Associate is required to submit a list of services rendered under such contract to the Broker requires such submission in order to meet any internal processing deadlines of such Broker for the purposes of compensation being timely rendered by the agreed-upon date as set forth below.

Payment will be made to the Sales Associate

- a. within 30 days of the receipt of the full commission paid to the Broker for the transaction or
- b. pursuant to a separate “Commission Agreement” between the Sales Associate and Broker attached hereto and made a part hereof

NYSAR Independent Contractor Agreement

16. Broker shall not threaten, intimidate, discipline, harass, deny a work opportunity to or discriminate against a Sales Associate, or take any other action that penalizes a Sales Associate for, or is reasonably likely to deter a Sales Associate from, exercising or attempting to exercise any right guaranteed under this chapter, or from obtaining future work opportunity because the Sales Associate has done so.

17. For the purposes of compliance with NYS Labor Law and New York City Administrative Code, the term “Sales Associate” shall also mean “Freelance Worker” and the term “Broker” shall also mean “Hiring Party” as defined in NYS Labor Law and the New York City Administrative Code.

18. The parties understand that the Sales Associate is an Independent Contractor and the language included to comply with NYS General Business Law and NYC Administrative Code does not create nor is it intended to create an employer/employee relationship of any kind directly or inferred.

GOOD CAUSE EVICTION

NYS Good Cause Eviction

- Automatically applies to NYC
- Localities outside of NYC can opt-in by passing local law
- Localities may modify 2 provisions

NYS Good Cause Eviction

- 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
- 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)

NYS 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 of the housing accommodation is a violation of law which subjects the landlord to civil or criminal penalties
- The tenant is using the accommodation illegally
- 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

NYS Good Cause Eviction

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- The tenant is using the accommodation illegally
- 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

NYS 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 reduced the number of units that apply for an exemption from 10 units to 1 unit. Theoretically, a locality could make the exemption apply to more than 10 units but this is unlikely.

NYS 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.

NYS Good Cause Eviction

- Real estate licensees should not be advising owner/landlord as to compliance with good cause eviction
- This is an obligation of the owner/landlord and they should consult with their attorney
- If licensee assumes the role of owner/landlord as a property manager, they should consult their own attorney
- Any licensee advising owner/landlord may be performing the unauthorized practice of law

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 latest news

How will I know when the SoE's expire?

- **EO 28.13: Support Asylum Seekers**

Declared: Extended on May 10, 2024 (Original EO 28 declared May 9, 2023)

Expires: June 9, 2024

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.