

NYSCAR / LIBOR CN LEGAL UPDATES

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“Commercial Real Estate Broker License?”

- There is no separate license for a commercial real estate broker.
- This seems to be a common misconception.
- Accordingly, laws and regulations regarding agency, fair housing and “corporate titles” are applicable to licensees who focus on commercial transactions.

New Continuing Education Requirements

- The Law will become effective on July 1, 2021 and will apply to all real estate licensees renewing their licenses after July 1, 2021.
- In order to renew a real estate license on or after July 1, 2021, all Licensees will be required to fulfill 22.5 hours of CE credits, including the following mandated (core) hours:
 - (a) 3 hours on fair housing;
 - (b) 1 hour on the law of agency (2 hours if within the initial 2-year license term);
 - (c) 2.5 hours on ethical business practices; and
 - (d) 1 hour on recent legal matters governing the practice of real licensees
- Moreover, the Law now eliminates the “grandfathering” clause (real estate brokers who have been licensed since prior to July 1, 2008 for at least 15 consecutive years were exempt from CE requirements).
 - If a license comes due before July 1, 2021, it should be renewed to avoid having to meet the “core classes” and so that the grandfathering clause would still apply.

Agency Reminder

- What “agency” disclosures am I required to give?
 - Title 19 NYCRR §175.7 requires agency disclosure on all transactions. It states that “a real estate brokers shall make it clear for which party he / she is acting...”
 - The law does not distinguish between commercial and residential transactions.
 - Agency Disclosure Form is required in all 1-4 family transactions.
 - Agency Disclosure is required in all transactions.
 - Failure to disclose the type of agent you are, particularly where a licensee is acting as a dual agent, can result in loss of commission.

Legal Line Question of the Week: Agency Disclosure Form in Commercial Transactions



Legal Line

Q: I am a licensed real estate salesperson working on the sale of a commercial property. Am I required to give the New York State Agency Disclosure Form in connection with commercial transactions?

A: No, New York State law only requires that the Agency Disclosure Form (the "Disclosure Form") be given in residential real property transactions. Article 12-A, Section 443 (1) (f) of the New York State Real Property Law defines residential real property as "real property used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons improved by (i) a one-to-four family dwelling or (ii) condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed."

However, it should be noted that Title 19, Section 175.7 of the New York Code of Rules and Regulations states, in part, that "a real estate broker shall make it clear for which party he is acting." This regulation is interpreted to impose a duty upon all real estate licensees to disclose which person or entity they are representing in all transactions, regardless of whether the transaction is residential or commercial. Unlike residential real property transactions where the Disclosure Form is required, the disclosure for commercial real property transactions does not need to be in writing.

Important Tip: Although there is no written agency disclosure form required for commercial real property transactions, it is strongly recommended that some type of written disclosure be provided by the real estate licensee so that there is never confusion or doubt as to who the real estate licensee is representing in such transactions.

New York State Fair Housing Laws Cover Commercial Spaces

- Section 296 of the New York State Human Rights Law (the “Law”) covers commercial spaces.
- “Commercial Space” means any space in a building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.
- Under Section 296 (5)(b)-(c) of the Law, it is an unlawful discriminatory practice for any owner (or other individual with a right to sell/lease commercial space) or real estate broker, real estate salesperson, or employee or agent thereof to refuse to rent, sell, or lease or otherwise deny or withhold a commercial space from any person because of such person’s race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, lawful source of income, or familial status. The Law also makes it an unlawful discriminatory practice for such persons to create or use any advertisement or application for a commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to members of one or more of the aforementioned protected categories.

Legal Line Question of the Week: New York City Fair Housing Laws and Commercial Spaces



Legal Line

Q: Do the “fair housing laws” set forth in the New York City Human Rights Code cover commercial spaces?

A: Yes, Section 296 -5 of the New York City Humans Rights Code (the “Code”) covers “commercial space.” The Code defines “commercial space,” in part, as “any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a separate business or professional unit or office in any building, structure or portion thereof.”

Pursuant to the Code, it is an unlawful discriminatory practice for any owner (or other individual with a right to sell/lease commercial space) or real estate broker (collectively, the “Covered Persons”) to refuse to rent, sell, or lease or otherwise deny or withhold a commercial space from any person because of such person’s race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status. The Code also makes it an unlawful discriminatory practice for Covered Persons to create or use any advertisement or application for a commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to members of one or more of the aforementioned protected categories.



New York State Housing and Anti-Discrimination Disclosure Form

Federal, State and local Fair Housing Laws provide comprehensive protections from discrimination in housing. It is unlawful for any property owner, landlord, property manager or other person who sells, rents or leases housing, to discriminate based on certain protected characteristics, which include, but are not limited to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, marital status, lawful source of income or familial status. Real estate professionals must also comply with all Fair Housing Laws.

Real estate brokers and real estate salespersons, and their employees and agents violate the Law if they:

- Discriminate based on any protected characteristic when negotiating a sale, rental or lease, including representing that a property is not available when it is available.
• Negotiate discriminatory terms of sale, rental or lease, such as stating a different price because of race, national origin or other protected characteristic.
• Discriminate based on any protected characteristic because it is the preference of a seller or landlord.
• Discriminate by "steering" which occurs when a real estate professional guides prospective buyers or renters towards or away from certain neighborhoods, locations or buildings, based on any protected characteristic.
• Discriminate by "blockbusting" which occurs when a real estate professional represents that a change has occurred or may occur in future in the composition of a block, neighborhood or area, with respect to any protected characteristics, and that the change will lead to undesirable consequences for that area, such as lower property values, increase in crime, or decline in the quality of schools.
• Discriminate by pressuring a client or employee to violate the Law.
• Express any discrimination because of any protected characteristic by any statement, publication, advertisement, application, inquiry or any Fair Housing Law record.

YOU HAVE THE RIGHT TO FILE A COMPLAINT

If you believe you have been the victim of housing discrimination you should file a complaint with the New York State Division of Human Rights (DHR). Complaints may be filed by:

- Downloading a complaint form from the DHR website: www.dhr.ny.gov;
• Stop by a DHR office in person, or contact one of the Division's offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint. A list of office locations is available online at: https://dhr.ny.gov/contact-us, and the Fair Housing HOTLINE at (844)-862-8703.

You may also file a complaint with the NYS Department of State, Division of Licensing Services. Complaints may be filed by:

- Downloading a complaint form from the Department of State's website https://www.dos.ny.gov/licensing/complaint_links.html
• Stop by a Department's office in person, or contact one of the Department's offices, by telephone or by mail, to obtain a complaint form.
• Call the Department at (518) 474-4429.

There is no fee charged to you for these services. It is unlawful for anyone to retaliate against you for filing a complaint.

New York State Housing and Anti-Discrimination Disclosure Form

For more information on Fair Housing Act rights and responsibilities please visit https://dhr.ny.gov/fairhousing and https://www.dos.ny.gov/licensing/fairhousing.html.

This form was provided to me by _____ (print name of Real Estate Salesperson/

Broker) of _____ (print name of Real Estate company, firm or brokerage)

(I)(We)_____

(Buyer/Tenant/Seller/Landlord) acknowledge receipt of a copy of this disclosure form:

Real Estate Consumer/Seller/Landlord Signature _____ Date: _____

Real Estate broker and real estate salespersons are required by New York State law to provide you with this Disclosure.



Legal Line Question: Corporate Titles

Q: I am a real estate broker and I am considering offering one of my real estate salespersons the title of Vice President. Can a real estate broker in New York offer a corporate title to a real estate salesperson?

A: No, a licensed real estate salesperson in New York may not use a corporate title such as "Vice President." In 2013, the New York State Department of State (the "DOS") issued two letters that addressed this issue and unequivocally stated that real estate salespersons and associate real estate brokers (that are not "representative brokers" of the real estate brokerage company) may not use corporate titles such as "President," "Vice President," "Senior Vice President," "Executive Vice President" and "Managing Director."

For more information please see the Legal Line Question of the Week on [Use of Corporate Titles](#).

Important Tip:

Recently the New York State Department of State (the "DOS") has been conducting audits of corporate titles used by real estate salespersons and associate real estate brokers. These audits may result in the filing of disciplinary actions by the DOS for the use of non-compliant titles. We therefore advise all REBNY member firms to review the [Department of State's April 2013 Letter](#) that reaffirms the regulations prohibiting licensees from using corporate titles for marketing purposes. Moreover, we advise all REBNY members to review the marketing and promotional materials, as well as the websites, e-mails and other materials utilized by real estate licensees under their supervision.

[READ MORE LEGAL LINE QUESTIONS >](#)



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Use of Corporate Titles

- -In 2013, the Department of State issued two opinions regarding the use of “corporate titles” by real estate salespersons and associate real estate brokers.
- Specifically, the DOS confirmed and clarified that real estate salespersons and associate real estate brokers are not permitted to use corporate titles.
- Titles such as Vice President or Managing Director are only permitted to be used by a real estate broker that is the “representative broker” or “broker of record” for the brokerage company.
- There can be multiple brokers of record for a brokerage company.
- It is irrelevant whether the salesperson or associate broker is an employee or independent contractor of the brokerage company.
- Most importantly, the DOS has indicated that by using a title without being a real estate broker is dishonest and misleading.
- The DOS conducts audits and has issued, the last time I checked, about \$100,000 in fines for the use of titles by real estate licensees.

Titles – Legal Justification

- -19 NYCRR Section 175.22 prohibits the ownership of voting stock by real estate salespersons.
- -Article 12A, Section 441(b)(2) proscribes that a real estate salesperson's license shall not be issued to any officer of a licensed, corporate real estate broker, a manager or member of a limited liability company or to a member of a co-partnership licensed as a real estate broker.
- -When looking at these two statutes, the DOS states: "Taken together, these provisions prohibit a real estate salesperson from holding voting stock or being appointed as an officer in a corporate brokerage, a manager or membership of a limited liability company or a member of a partnership."
- -The DOS then states: "Although the statute and regulation refer to "real estate salesperson," they apply equally to associate brokers.
- -The DOS has issued further guidance that any associate real estate broker can be elevated to a "real estate broker" (representative broker of a brokerage company) and a real estate broker may have a corporate title.
- Most importantly, the DOS has indicated that by using a title without being a real estate broker is dishonest and misleading.