S T A T E O F N E W Y O R K

10443

I N A S S E M B L Y

March 26, 2010

Introduced by M. of A. BING, SCHIMEL, BOYLAND, KOON -- Multi-Sponsored by -- M. of A. CAHILL, JEFFRIES, McENENY, REILLY, SKARTADOS, WEISENBERG -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to disclosure regarding real estate agency relationship

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs a and f of subdivision 1 of section 443 of the real property law, as amended by chapter 549 of the laws of 2007, are amended and two new paragraphs p and q are added to read as follows:

a. "Agent" means a person who is licensed as a real estate broker [or real estate sales associate], ASSOCIATE REAL ESTATE BROKER OR REAL ESTATE SALESPERSON under section four hundred forty-a of this article and is acting in a fiduciary capacity.

f. "Residential real property" means 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 [used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons,] OR (II) CONDOMINIUM OR COOPERATIVE APARTMENTS but shall not refer to [(i)] unimproved real property upon which such dwellings are to be constructed [or (ii) condominium or cooperative apartments in a building containing more than four units].

P. "ADVANCE CONSENT TO DUAL AGENCY" MEANS WRITTEN CONSENT SIGNED BY THE SELLER/LANDLORD OR BUYER/TENANT THAT THE LISTING AGENT AND/OR BUYER'S AGENT MAY ACT AS A DUAL AGENT FOR THAT SELLER/LANDLORD AND A BUYER/TENANT FOR RESIDENTIAL REAL PROPERTY WHICH IS THE SUBJECT OF A LISTING AGREEMENT.

Q. "ADVANCE CONSENT TO DUAL AGENCY WITH DESIGNATED SALES AGENTS" MEANS WRITTEN CONSENT SIGNED BY THE SELLER/LANDLORD OR BUYER/TENANT THAT INDICATES THE NAME OF THE AGENT APPOINTED TO REPRESENT THE SELLER/LANDLORD OR BUYER/TENANT AS A DESIGNATED SALES AGENT FOR RESIDENTIAL REAL PROPERTY WHICH IS THE SUBJECT OF A LISTING AGREEMENT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2. Paragraphs b and c of subdivision 3 of section 443 of the real property law, as amended by chapter 549 of the laws of 2007, are amended and a new paragraph f is added to read as follows:

b. A seller's agent or landlord's agent shall provide the disclosure form set forth in subdivision four of this section to a buyer[, buyer's agent,] OR tenant [or tenant's agent] at the time of the first substantive contact with the buyer or tenant and shall obtain a signed acknowledgement from the buyer or tenant, except as provided in paragraph e of this subdivision. A SELLER'S AGENT OR LANDLORD'S AGENT IS NOT REQUIRED TO PROVIDE THE DISCLOSURE FORM TO A BUYER OR TENANT AT FIRST SUBSTANTIVE CONTACT IF THE BUYER OR TENANT IS IN THE PRESENCE OF THEIR BUYER'S AGENT OR TENANT'S AGENT.

c. A buyer's agent or tenant's agent shall provide the disclosure form to the buyer or tenant prior to entering into an agreement to act as the buyer's agent or tenant's agent and shall obtain a signed acknowledgment from the buyer or tenant, except as provided in paragraph e of this subdivision. A buyer's agent or tenant's agent shall provide the form to the seller[, seller's agent,] OR landlord [or landlord's agent] at the time of the first substantive contact with the seller or landlord and shall obtain a signed acknowledgment from the seller[,] OR landlord [or the listing agent,] except as provided in paragraph e of this subdivision. A BUYER'S AGENT OR TENANT'S AGENT IS NOT REQUIRED TO PROVIDE THE DISCLOSURE FORM TO A SELLER OR LANDLORD AT FIRST SUBSTANTIVE CONTACT IF THE SELLER OR LANDLORD IS IN THE PRESENCE OF THEIR SELLER'S AGENT OR LANDLORD'S AGENT.

F. A SELLER/LANDLORD OR BUYER/TENANT MAY PROVIDE ADVANCE CONSENT TO DUAL AGENCY AND DUAL AGENCY WITH DESIGNATED SALES AGENTS BY INDICATING THE SAME ON THE FORM SET FORTH IN SUBDIVISION FOUR OF THIS SECTION.

S 3. Paragraphs a and b of subdivision 4 of section 443 of the real property law, as amended by chapter 549 of the laws of 2007, is amended to read as follows:

a. For buyer-seller transactions, the following shall be the disclosure form:

NEW YORK STATE DISCLOSURE FORM
FOR
BUYER AND SELLER
THIS IS NOT A CONTRACT

New York state law requires real estate licensees who are acting as agents of buyers or sellers of property to advise the potential buyers or sellers with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales associates.

Throughout the transaction you may receive more than one disclosure form. The law [requires] MAY REQUIRE each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate.

If you need legal, tax or other advice, consult with a professional in that field.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS
SELLER'S AGENT

A seller's agent is an agent who is engaged by a seller to represent the seller's interests. The seller's agent does this by securing a buyer for the seller's home at a price and on terms acceptable to the seller. A seller's agent has, without limitation, the following fiduciary duties to the seller: reasonable care, undivided loyalty, confidentiality, full

disclosure, obedience and duty to account. A seller's agent does not represent the interests of the buyer. The obligations of a seller's agent are also subject to any specific provisions set forth in an agreement between the agent and the seller. In dealings with the buyer, a seller's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

BUYER'S AGENT

A buyer's agent is an agent who is engaged by a buyer to represent the buyer's interests. The buyer's agent does this by negotiating the purchase of a home at a price and on terms acceptable to the buyer. A buyer's agent has, without limitation, the following fiduciary duties to the buyer: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A buyer's agent does not represent the interests of the seller. The obligations of a buyer's agent are also subject to any specific provisions set forth in an agreement between the agent and the buyer. In dealings with the seller, a buyer's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the buyer's ability and/or willingness to perform a contract to acquire seller's property that are not inconsistent with the agent's fiduciary duties to the buyer.

BROKER'S AGENTS

A broker's agent is an agent that cooperates or is engaged by a listing agent or a buyer's agent (but does not work for the same firm as the listing agent or buyer's agent) to assist the listing agent or buyer's agent in locating a property to sell or buy, respectively, for the listing agent's seller or the buyer agent's buyer. The broker's agent does not have a direct relationship with the buyer or seller and the buyer or seller can not provide instructions or direction directly to the broker's agent. The buyer and the seller therefore do not have vicarious liability for the acts of the broker's agent. The listing agent or buyer's agent do provide direction and instruction to the broker's agent and therefore the listing agent or buyer's agent will have liability for the acts of the broker's agent.

DUAL AGENT

A real estate broker may represent both the buyer and the seller if both the buyer and seller give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the buyer and seller. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the buyer and seller. An agent acting as a dual agent must explain carefully to both the buyer and seller that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the buyer and seller are giving up their right to undivided loyalty. A buyer or seller should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation. A SELLER OR BUYER MAY PROVIDE ADVANCE CONSENT TO DUAL AGENCY BY INDICATING THE SAME ON THIS FORM.

DUAL AGENT
WITH
DESIGNATED SALES AGENTS

If the buyer and the seller provide their informed consent in writing, the principals and the real estate broker who represents both parties as a dual agent may designate a sales agent to represent the buyer and another sales agent to represent the seller to negotiate the purchase and sale of real estate. A sales agent works under the supervision of the real estate broker. With the informed consent of the buyer and the seller in writing, 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. A buyer or seller should carefully consider the possible consequences of a dual agency relationship with designated sales agents before agreeing to such representation. A SELLER OR BUYER MAY PROVIDE ADVANCE CONSENT TO DUAL AGENCY WITH DESIGNATED SALES AGENTS BY INDICATING THE SAME ON THIS FORM.

This form was provided to me by _____ (print name of licensee) of _____ (print name of company, firm or brokerage), a licensed real estate broker acting in the interest of the:

( ) Seller as a (check relationship below)	( ) Buyer as a (check relationship below)
( ) Seller's agent	( ) Buyer's agent
( ) Broker's agent	( ) Broker's agent
( ) Dual agent	( ) Dual agent with designated sales agents

_____ BY INITIALING, I/WE CONSENT TO A DUAL AGENT RELATIONSHIP IN ADVANCE

_____ BY INITIALING, I/WE CONSENT TO A DUAL AGENT WITH DESIGNATED SALES AGENT RELATIONSHIP IN ADVANCE

If dual agent with designated sales agents is [checked] INDICATED ABOVE:

_____ is appointed to represent the buyer; and

_____ is appointed to represent the seller in this transaction.

(I)(We) acknowledge receipt of a copy of this disclosure form:

Signature of { } Buyer(s) and/or { } Seller(s):

_____ _____

_____ _____

Date:_____ Date:_____

b. For landlord-tenant transactions, the following shall be the disclosure form:

NEW YORK STATE DISCLOSURE FORM
FOR
LANDLORD AND TENANT

THIS IS NOT A CONTRACT

New York state law requires real estate licensees who are acting as agents of landlords and tenants of real property to advise the potential

landlords and tenants with whom they work of the nature of their agency relationship and the rights and obligations it creates. This disclosure will help you to make informed choices about your relationship with the real estate broker and its sales associates.

Throughout the transaction you may receive more than one disclosure form. The law [requires] MAY REQUIRE each agent assisting in the transaction to present you with this disclosure form. A real estate agent is a person qualified to advise about real estate.

If you need legal, tax or other advice, consult with a professional in that field.

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS

LANDLORD'S AGENT

A landlord's agent is an agent who is engaged by a landlord to represent the landlord's interest. The landlord's agent does this by securing a tenant for the landlord's apartment or house at a rent and on terms acceptable to the landlord. A landlord's agent has, without limitation, the following fiduciary duties to the landlord: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A landlord's agent does not represent the interests of the tenant. The obligations of a landlord's agent are also subject to any specific provisions set forth in an agreement between the agent and the landlord. In dealings with the tenant, a landlord's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the agent materially affecting the value or desirability of property, except as otherwise provided by law.

TENANT'S AGENT

A tenant's agent is an agent who is engaged by a tenant to represent the tenant's interest. The tenant's agent does this by negotiating the rental or lease of an apartment or house at a rent and on terms acceptable to the tenant. A tenant's agent has, without limitation, the following fiduciary duties to the tenant: reasonable care, undivided loyalty, confidentiality, full disclosure, obedience and duty to account. A tenant's agent does not represent the interest of the landlord. The obligations of a tenant's agent are also subject to any specific provisions set forth in an agreement between the agent and the tenant. In dealings with the landlord, a tenant's agent should (a) exercise reasonable skill and care in performance of the agent's duties; (b) deal honestly, fairly and in good faith; and (c) disclose all facts known to the tenant's ability and/or willingness to perform a contract to rent or lease landlord's property that are not inconsistent with the agent's fiduciary duties to the buyer.

BROKER'S AGENTS

A broker's agent is an agent that cooperates or is engaged by a listing agent or a tenant's agent (but does not work for the same firm as the listing agent or tenant's agent) to assist the listing agent or tenant's agent in locating a property to rent or lease for the listing agent's landlord or the tenant agent's tenant. The broker's agent does not have a direct relationship with the tenant or landlord and the tenant or landlord can not provide instructions or direction directly to

the broker's agent. The tenant and the landlord therefore do not have vicarious liability for the acts of the broker's agent. The listing agent or tenant's agent do provide direction and instruction to the broker's agent and therefore the listing agent or tenant's agent will have liability for the acts of the broker's agent.

DUAL AGENT

A real estate broker may represent both the tenant and the landlord if both the tenant and landlord give their informed consent in writing. In such a dual agency situation, the agent will not be able to provide the full range of fiduciary duties to the landlord and the tenant. The obligations of an agent are also subject to any specific provisions set forth in an agreement between the agent, and the tenant and landlord. An agent acting as a dual agent must explain carefully to both the landlord and tenant that the agent is acting for the other party as well. The agent should also explain the possible effects of dual representation, including that by consenting to the dual agency relationship the landlord and tenant are giving up their right to undivided loyalty. A landlord and tenant should carefully consider the possible consequences of a dual agency relationship before agreeing to such representation. A LANDLORD OR TENANT MAY PROVIDE ADVANCE CONSENT TO DUAL AGENCY BY INDICATING THE SAME ON THIS FORM.

DUAL AGENT
WITH
DESIGNATED SALES AGENTS

If the tenant and the landlord provide their informed consent in writing, the principals and the real estate broker who represents both parties as a dual agent may designate a sales agent to represent the tenant and another sales agent to represent the landlord. A sales agent works under the supervision of the real estate broker. With the informed consent in writing of the tenant and the landlord, the designated sales agent for the tenant will function as the tenant's agent representing the interests of and advocating on behalf of the tenant and the designated sales agent for the landlord will function as the landlord's agent representing the interests of and advocating on behalf of the landlord in the negotiations between the tenant and the landlord. A designated sales agent cannot provide the full range of fiduciary duties to the landlord or tenant. The designated sales agent must explain that like the dual agent under whose supervision they function, they cannot provide undivided loyalty. A landlord or tenant should carefully consider the possible consequences of a dual agency relationship with designated sales agents before agreeing to such representation. A LANDLORD OR TENANT MAY PROVIDE ADVANCE CONSENT TO DUAL AGENCY WITH DESIGNATED SALES AGENTS BY INDICATING THE SAME ON THIS FORM.

This form was provided to me by _____ (print name of licensee) of _____ (print name of company, firm or brokerage), a licensed real estate broker acting in the interest of the:

( ) Landlord as a (check relationship below)	( ) Tenant as a (check relationship below)
( ) Landlord's agent	( ) Tenant's agent
( ) Broker's agent	( ) Broker's agent

( ) Dual agent ( ) Dual agent with designated sales agents

BY INITIALING, I/WE CONSENT TO A DUAL AGENT RELATIONSHIP IN ADVANCE

BY INITIALING, I/WE CONSENT TO A DUAL AGENT WITH DESIGNATED SALES AGENT RELATIONSHIP IN ADVANCE

If dual agent with designated sales agents is [checked] INDICATED ABOVE:

_____ is appointed to represent the tenant; and

_____ is appointed to represent the landlord in this transaction.

(I) (We) _____ acknowledge receipt of a copy of this disclosure form:

Signature of { } Landlord(s) and/or { } Tenant(s):

_____

_____

Date: _____ Date: _____

S 4. This act shall take effect January 1, 2011.