

STATE OF NEW YORK

9823

IN ASSEMBLY

April 9, 2024

Introduced by M. of A. JACKSON -- read once and referred to the Committee on Judiciary

AN ACT to amend the real property law, in relation to prohibiting single-agent dual agency, requiring representation agreements, allowing buyers and tenants to negotiate broker fees, and prohibiting landlords, lessors, sub-lessors, and grantors from requiring a tenant to pay brokers' fees as a condition of entering into a lease agreement

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (a) of subdivision 1 of section 238-a of the real
2 property law, as amended by chapter 789 of the laws of 2021, is amended
3 to read as follows:

4 (a) Except in instances where statutes or regulations provide for a
5 payment, fee or charge, no landlord, lessor, sub-lessor or grantor may
6 demand any payment, fee, or charge for the processing, review or accept-
7 ance of an application, or demand any other payment, fee or charge
8 before or at the beginning of the tenancy, including but not limited to
9 broker's fees, except background checks and credit checks as provided by
10 paragraph (b) of this subdivision, provided that this subdivision shall
11 not apply to entrance fees charged by continuing care retirement commu-
12 nities licensed pursuant to article forty-six or forty-six-A of the
13 public health law, assisted living providers licensed pursuant to arti-
14 cle forty-six-B of the public health law, adult care facilities licensed
15 pursuant to article seven of the social services law, senior residential
16 communities that have submitted an offering plan to the attorney gener-
17 al, or not-for-profit independent retirement communities that offer
18 personal emergency response, housekeeping, transportation and meals to
19 their residents. Nothing in this paragraph shall prohibit a cooperative
20 housing corporation, other than a cooperative housing corporation
21 subject to the provisions of article two, article four, article five or
22 article eleven of the private housing finance law, from demanding from a
23 prospective tenant any payment, fee or charge which is necessary to
24 compensate a managing agent and/or transfer agent for the processing,
25 review or acceptance of such prospective tenant's application where such

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

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prospective tenant would become a dwelling unit owner or shareholder of such cooperative housing corporation.

§ 2. The real property law is amended by adding a new section 443-b to read as follows:

§ 443-b. Agency relationships. 1. Application. The agency relationships and requirements specified in this section or in rules or regulations promulgated by the secretary of state shall supersede any agency relationships and requirements between a licensee and a party to a residential real estate transaction which are based upon common law principles of agency if such common law principles are inconsistent with those specified in this section. This section shall apply only to transactions involving residential real property.

2. Definitions. For the purposes of this section, the following terms shall have the following meanings:

(a) "Dual agent" shall mean an agent who is acting as a buyer's agent and a seller's agent or a tenant's agent and a landlord's agent in the same transaction.

(b) "Designated sales agent" shall mean a licensed real estate salesperson or associate broker, working under the supervision of a real estate broker, who has been assigned to represent a client when a different client is also represented by such real estate broker in the same transaction.

(c) "Representation agreement" shall mean a written contract between a buyer or tenant of residential real property and a licensee, by which the licensee has been authorized to act as an agent on behalf of the buyer or tenant to locate residential real property, present an offer to purchase or lease to the seller, seller's agent, landlord or landlord's agent, and negotiates on behalf of the buyer or tenant.

3. Individual dual agency prohibited. No individual real estate broker, associate real estate broker, or real estate salesperson shall act as a buyer's agent and seller's agent in the same transaction, or act as a tenant's agent and landlord's agent in the same transaction; provided, however that a real estate broker may assign a separate real estate salesperson or associate broker working under their supervision to act as a designated sales agent to represent a client when a different client is also represented by such real estate broker in the same transaction.

4. Buyer or tenant representation agreements. (a) A representation agreement shall:

(i) be written in clear and unambiguous language;

(ii) fully set forth all material terms, including the terms of licensee compensation;

(iii) have a definite duration or expiration date, including dates of inception and expiration; and

(iv) be signed by all parties to the agreement.

(b) No real estate broker, associate real estate broker, or real estate salesperson shall locate residential real property for a tenant and/or negotiate on behalf of such tenant unless such real estate broker, associate real estate broker, or real estate salesperson has entered into a representation agreement to represent such tenant as such tenant's agent. Such representation agreement must be entered into prior to or immediately after a licensee shows any property to a tenant for the first time.

(c) No real estate broker, associate real estate broker, or real estate salesperson shall present an offer to purchase residential real property to a seller or seller's agent and negotiate on behalf of the

1 buyer unless such real estate broker, associate real estate broker, or
2 real estate salesperson has entered into a written representation agree-
3 ment to represent such buyer as such buyer's agent. Such representation
4 agreement must be entered into no later than when the offer to purchase
5 is made to the seller or seller's agent.

6 5. Agent compensation from buyer or tenant. (a) No real estate broker,
7 associate real estate broker, or real estate salesperson shall collect
8 or demand compensation from a tenant in connection with a residential
9 real property transaction unless such real estate broker, associate real
10 estate broker, or real estate salesperson has entered into a signed
11 representation agreement with such tenant to act as such tenant's agent
12 in the transaction.

13 (b) No real estate broker, associate real estate broker, or real
14 estate salesperson shall collect or demand compensation from a buyer in
15 connection with a residential real property transaction unless such real
16 estate broker, associate real estate broker, or real estate salesperson
17 has entered into a signed representation agreement with such buyer to
18 act as such buyer's agent in the transaction.

19 6. No discrimination. No real estate broker, associate real estate
20 broker, real estate salesperson, or landlord may discriminate or take
21 adverse action against a potential tenant or buyer based on their repre-
22 sentation status.

23 7. Written permission or authorization to offer or advertise property
24 for sale or lease required. (a) No real estate broker, associate real
25 estate broker, or real estate salesperson shall offer or advertise resi-
26 dential real property for sale or lease unless such real estate broker,
27 associate real estate broker, or real estate salesperson has the written
28 permission or authorization of the owner of such residential real prop-
29 erty or such owner's authorized representative.

30 (b) If a real estate broker, associate real estate broker, or real
31 estate salesperson offers or advertises residential real property for
32 lease with the written permission or authorization of the owner of such
33 residential real property or the owner's authorized representative
34 pursuant to paragraph (a) of this subdivision and does not have a list-
35 ing agreement with such owner or such owner's authorized representative,
36 such real estate broker, associate real estate broker, or real estate
37 salesperson shall not enter into a representation agreement with and/or
38 be compensated by any tenant in connection with such residential real
39 property.

40 § 3. Paragraphs i, p, and q of subdivision 1, paragraph f of subdivi-
41 sion 3, and subdivisions 4 and 6 of section 443 of the real property
42 law, paragraph i of subdivision 1, subdivision 4 and subdivision 6 as
43 amended by chapter 549 of the laws of 2007, and paragraphs p and q of
44 subdivision 1 and paragraph f of subdivision 3 as added and paragraphs a
45 and b of subdivision 4 as amended by chapter 443 of the laws of 2010,
46 are amended to read as follows:

47 i. [~~"Dual-agent"~~] "Representation agreement" means [an-agent-who-is
48 acting-as] a [buyer's-agent] written contract between a buyer or tenant
49 of residential real property and a [seller's] licensee, by which such
50 licensee has been authorized to act as an agent on behalf of such buyer
51 or [a-tenant's-agent-and-a] tenant to locate residential real property,
52 present an offer to purchase or lease to the seller, such seller's
53 agent, the landlord, or such landlord's agent [in-the-same-transaction],
54 and negotiates on behalf of such buyer or tenant.

55 p. [~~"Advance consent to dual agency" means written informed consent~~
56 ~~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.~~

g.] "Advance consent to dual agency with designated sales agents" means written informed 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.

f. A seller/landlord or buyer/tenant may provide advance informed 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.

4. 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 agents.

Throughout the transaction you may receive more than one disclosure form. The law 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]~~ the representation agreement between the agent and the buyer. Such representation agreement must be entered into prior to when the offer to

1 purchase is made to the seller or seller's agent. In dealings with the
2 seller, a buyer's agent should (a) exercise reasonable skill and care in
3 performance of the agent's duties; (b) deal honestly, fairly and in good
4 faith; and (c) disclose all facts known to the agent materially affect-
5 ing the buyer's ability and/or willingness to perform a contract to
6 acquire seller's property that are not inconsistent with the agent's
7 fiduciary duties to the buyer.

8 BROKER'S AGENTS

9 A broker's agent is an agent that cooperates or is engaged by a list-
10 ing agent or a buyer's agent (but does not work for the same firm as the
11 listing agent or buyer's agent) to assist the listing agent or buyer's
12 agent in locating a property to sell or buy, respectively, for the list-
13 ing agent's seller or the buyer agent's buyer. The broker's agent does
14 not have a direct relationship with the buyer or seller and the buyer or
15 seller can not provide instructions or direction directly to the
16 broker's agent. The buyer and the seller therefore do not have vicarious
17 liability for the acts of the broker's agent. The listing agent or
18 buyer's agent do provide direction and instruction to the broker's agent
19 and therefore the listing agent or buyer's agent will have liability for
20 the acts of the broker's agent.

21 ~~[DUAL AGENT~~

22 ~~A real estate broker may represent both the buyer and the seller if~~
23 ~~both the buyer and seller give their informed consent in writing. In~~
24 ~~such a dual agency situation, the agent will not be able to provide the~~
25 ~~full range of fiduciary duties to the buyer and seller. The obligations~~
26 ~~of an agent are also subject to any specific provisions set forth in an~~
27 ~~agreement between the agent, and the buyer and seller. An agent acting~~
28 ~~as a dual agent must explain carefully to both the buyer and seller that~~
29 ~~the agent is acting for the other party as well. The agent should also~~
30 ~~explain the possible effects of dual representation, including that by~~
31 ~~consenting to the dual agency relationship the buyer and seller are~~
32 ~~giving up their right to undivided loyalty. A buyer or seller should~~
33 ~~carefully consider the possible consequences of a dual agency relation-~~
34 ~~ship before agreeing to such representation. A seller or buyer may~~
35 ~~provide advance informed consent to dual agency by indicating the same~~
36 ~~on this form.]~~

37 DUAL AGENT

38 WITH

39 DESIGNATED SALES AGENTS

40 If the buyer and the seller provide their informed consent in writing,
41 the principals and the real estate broker who represents both parties as
42 a dual agent may designate a sales agent to represent the buyer and
43 another sales agent to represent the seller to negotiate the purchase
44 and sale of real estate. A sales agent works under the supervision of
45 the real estate broker. With the informed consent of the buyer and the
46 seller in writing, the designated sales agent for the buyer will func-
47 tion as the buyer's agent representing the interests of and advocating
48 on behalf of the buyer and the designated sales agent for the seller
49 will function as the seller's agent representing the interests of and
50 advocating on behalf of the seller in the negotiations between the buyer
51 and seller. A designated sales agent cannot provide the full range of
52 fiduciary duties to the buyer or seller. The designated sales agent must
53 explain that like the dual agent under whose supervision they function,
54 they cannot provide undivided loyalty. A buyer or seller should careful-
55 ly consider the possible consequences of a dual agency relationship with
56 designated sales agents before agreeing to such representation. A seller

1 or buyer may provide advance informed consent to dual agency with design-
 2 nated sales agents by indicating the same on this form.

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

7 () Seller as a () Buyer as a
 8 (check relationship below) (check relationship below)
 9 () Seller's agent () Buyer's agent
 10 () Broker's agent () Broker's agent
 11 [~~() Dual agent~~] () Dual agent with designated sales agents

12 For advance informed consent to [~~either dual agency or~~] dual agency
 13 with designated sales agents complete section below:

14 [~~() Advance informed consent dual agency.~~]
 15 () Advance informed consent to dual agency with designated sales
 16 agents.

17 If dual agent with designated sales agents is indicated above:
 18 _____ is appointed to represent the buyer; and
 19 _____ is appointed to represent the seller in this
 20 transaction.

21 (I)(We) acknowledge receipt of a copy of this disclosure form:
 22 Signature of { } Buyer(s) and/or { } Seller(s):

23 _____
 24 _____
 25 Date: _____ Date: _____

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

28 NEW YORK STATE DISCLOSURE FORM
 29 FOR
 30 LANDLORD AND TENANT

31 THIS IS NOT A CONTRACT

32 New York state law requires real estate licensees who are acting as
 33 agents of landlords and tenants of real property to advise the potential
 34 landlords and tenants with whom they work of the nature of their agency
 35 relationship and the rights and obligations it creates. This disclosure
 36 will help you to make informed choices about your relationship with the
 37 real estate broker and its sales agents.

38 Throughout the transaction you may receive more than one disclosure
 39 form. The law may require each agent assisting in the transaction to
 40 present you with this disclosure form. A real estate agent is a person
 41 qualified to advise about real estate. If you need legal, tax or other
 42 advice, consult with a professional in that field.

43 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS
 44 LANDLORD'S AGENT

45 A landlord's agent is an agent who is engaged by a landlord to repre-
 46 sent the landlord's interest. The landlord's agent does this by securing
 47 a tenant for the landlord's apartment or house at a rent and on terms
 48 acceptable to the landlord. A landlord's agent has, without limitation,

1 the following fiduciary duties to the landlord: reasonable care, undi-
2 vided loyalty, confidentiality, full disclosure, obedience and duty to
3 account. A landlord's agent does not represent the interests of the
4 tenant. The obligations of a landlord's agent are also subject to any
5 specific provisions set forth in an agreement between the agent and the
6 landlord. In dealings with the tenant, a landlord's agent should (a)
7 exercise reasonable skill and care in performance of the agent's duties;
8 (b) deal honestly, fairly and in good faith; and (c) disclose all facts
9 known to the agent materially affecting the value or desirability of
10 property, except as otherwise provided by law.

11 TENANT'S AGENT

12 A tenant's agent is an agent who is engaged by a tenant to represent
13 the tenant's interest. The tenant's agent does this by negotiating the
14 rental or lease of an apartment or house at a rent and on terms accepta-
15 ble to the tenant. A tenant's agent has, without limitation, the follow-
16 ing fiduciary duties to the tenant: reasonable care, undivided loyalty,
17 confidentiality, full disclosure, obedience and duty to account. A
18 tenant's agent does not represent the interest of the landlord. The
19 obligations of a tenant's agent are also subject to any specific
20 provisions set forth in [an] the representation agreement between the
21 agent and the tenant. Such representation agreement must be entered into
22 prior to or immediately after the tenant's agent shows any property to
23 the tenant for the first time. In dealings with the landlord, a tenant's
24 agent should (a) exercise reasonable skill and care in performance of
25 the agent's duties; (b) deal honestly, fairly and in good faith; and (c)
26 disclose all facts known to the tenant's ability and/or willingness to
27 perform a contract to rent or lease landlord's property that are not
28 inconsistent with the agent's fiduciary duties to the buyer.

29 BROKER'S AGENTS

30 A broker's agent is an agent that cooperates or is engaged by a list-
31 ing agent or a tenant's agent (but does not work for the same firm as
32 the listing agent or tenant's agent) to assist the listing agent or
33 tenant's agent in locating a property to rent or lease for the listing
34 agent's landlord or the tenant agent's tenant. The broker's agent does
35 not have a direct relationship with the tenant or landlord and the
36 tenant or landlord can not provide instructions or direction directly to
37 the broker's agent. The tenant and the landlord therefore do not have
38 vicarious liability for the acts of the broker's agent. The listing
39 agent or tenant's agent do provide direction and instruction to the
40 broker's agent and therefore the listing agent or tenant's agent will
41 have liability for the acts of the broker's agent.

42 [~~DUAL AGENT~~]

43 ~~A real estate broker may represent both the tenant and the landlord if~~
44 ~~both the tenant and landlord give their informed consent in writing. In~~
45 ~~such a dual agency situation, the agent will not be able to provide the~~
46 ~~full range of fiduciary duties to the landlord and the tenant. The obli-~~
47 ~~gations of an agent are also subject to any specific provisions set~~
48 ~~forth in an agreement between the agent, and the tenant and landlord. An~~
49 ~~agent acting as a dual agent must explain carefully to both the landlord~~
50 ~~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 informed 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 informed 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 () Tenant as a
(check relationship below) (check relationship below)
() Landlord's agent () Tenant's agent
() Broker's agent () Broker's agent
[~~() Dual agent~~] () Dual agent with designated sales agents

For advance informed consent to [~~either dual agency or~~] dual agency with designated sales agents complete section below:

[~~() Advance informed consent dual agency.~~]
() Advance informed consent to dual agency with designated sales agents.

If dual agent with designated sales agents is 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:

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

2 _____

3 _____

4 Date: _____ Date: _____

5 6. ~~[Nothing]~~ Except as provided for in section four hundred forty-
6 three-b of this article, nothing in this section shall be construed to
7 limit or alter the application of the common law of agency with respect
8 to residential real estate transactions.
9 § 4. This act shall take effect on the one hundred eightieth day after
10 it shall have become a law.