STATE OF NEW YORK

9686

IN SENATE

May 20, 2024

Introduced by Sen. MYRIE -- read twice and ordered printed, and when printed to be committed 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 brokers' 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:

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

(a) Except in instances where statutes or regulations provide for a payment, fee or charge, no landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, **including but not limited to brokers' fees,** except background checks and credit checks as provided by paragraph (b) of this subdivision, provided that this subdivision shall not apply to entrance fees charged by continuing care retirement communities licensed pursuant to article forty-six or forty-six-A of the public health law, assisted living providers licensed pursuant to article forty-six-B of the public health law, adult care facilities licensed pursuant to article seven of the social services law, senior residential communities that have submitted an offering plan to the attorney general, or not-for-profit independent retirement communities that offer personal emergency response, housekeeping, transportation and meals to their residents. Nothing in this paragraph shall prohibit a cooperative housing corporation, other than a cooperative housing corporation subject to the provisions of article two, article four, article five or article eleven of the private housing finance law, from demanding from a prospective tenant any payment, fee or charge which is necessary to compensate a managing agent and/or transfer agent for the processing, 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. Definitions. For the purposes of this section:

(a) "Dual agent" means 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" means 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" means 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.

2. Application. The agency relationships and requirements as 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 to the extent that those common law principles are inconsistent with those specified in this section. This section shall apply only to transactions involving residential real property.

3. Individual dual agency prohibited. No individual real estate broker, associate real estate broker or real estate salesperson may act as a buyer's agent and seller's agent in the same transaction. No real estate broker, associate real estate broker or real estate salesperson may act as a tenant's agent and landlord's agent in the same transaction. However, 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, showing dates of inception and expiration.

(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 the tenant unless the real estate broker, associate real estate broker or real estate salesperson has entered into a representation agreement to represent the tenant as a tenant's agent. The 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 buyer

unless the real estate broker, associate real estate broker, or real estate salesperson has entered into a written representation agreement to represent the buyer as a buyer's agent. The representation agreement must be entered into no later than the presentation of the offer to purchase to the seller or seller's agent.

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

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

6. No discrimination. No real estate broker, associate real estate broker, real estate salesperson, or landlord may discriminate or take adverse action against a potential tenant or buyer based on their representation status.

7. Written permission or authorization to offer or advertise property for sale or lease required. (a) No real estate broker, associate real estate broker or real estate salesperson shall offer or advertise residential real property for sale or lease unless the real estate broker, associate real estate broker or real estate salesperson has the written permission or authorization of the owner or the owner's authorized representative.

(b) If a real estate broker, associate real estate broker or real estate salesperson offers or advertises residential real property for lease with the written permission or authorization of the owner or the owner's authorized representative under this section and does not have a listing agreement with the owner or the owner's authorized representative, the real estate broker, associate real estate broker or real estate salesperson shall not enter into a representation agreement with and/or be compensated by any tenant in connection with the residential real property offered or advertised for lease.

§ 3. Section 443 of the real property law, as amended by chapter 549 of the laws of 2007, paragraphs a and f of subdivision 1 and paragraphs a and b of subdivision 4 as amended and paragraphs p and q of subdivision 1 and paragraph f of subdivision 3 as added by chapter 443 of the laws of 2010, and paragraph j of subdivision 1 as amended by chapter 529 of the laws of 2022, is amended to read as follows:

§ 443. Disclosure regarding real estate agency relationship; form. 1. Definitions. As used in this section, the following terms shall have the following meanings:

a. "Agent" means a person who is licensed as a real estate broker, associate real estate broker or real estate salesperson under section four hundred forty-a of this article and is acting in a fiduciary capacity.

b. "Buyer" means a transferee in a residential real property transaction and includes a person who executes an offer to purchase residential real property from a seller through an agent, or who has engaged the services of an agent with the object of entering into a residential real property transaction as a transferee.

c. "Buyer's agent" means an agent who contracts to locate residential real property for a buyer or who finds a buyer for a property and presents an offer to purchase to the seller or seller's agent and negotiates on behalf of the buyer.

d. "Listing agent" means a person who has entered into a listing agreement to act as an agent of the seller or landlord for compensation.

e. "Listing agreement" means a contract between an owner or owners of residential real property and an agent, by which the agent has been authorized to sell or lease the residential real property or to find or obtain a buyer or lessee therefor.

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 or (ii) condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed.

g. "Seller" means the transferor in a residential real property transaction, and includes an owner who lists residential real property for sale with an agent, whether or not a transfer results, or who receives an offer to purchase residential real property.

h. "Seller's agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, acts as a seller's subagent or acts as a broker's agent to find or obtain a buyer for residential real property.

i. [~~"Dual agent" means 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.~~] "Representation agreement" means 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.

j. "Designated sales agent" means 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.

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

l. "Tenant" means a lessee in a residential real property transaction and includes a person who executes an offer to lease residential real property from a landlord through an agent, or who has engaged the services of an agent with the object of entering into a residential real property transaction as a lessee.

m. "Landlord" means the lessor in a residential real property transaction, and includes an owner who lists residential real property for lease with an agent, whether or not a lease results, or who receives an offer to lease residential real property.

n. "Tenant's agent" means an agent who contracts to locate residential real property for a tenant or who finds a tenant for a property and presents an offer to lease to the landlord or landlord's agent and negotiates on behalf of the tenant.

o. "Landlord's agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, acts as a landlord's subagent or acts as a broker's agent to find or obtain a tenant for residential real property.

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

2. This section shall apply only to transactions involving residential real property.

3. a. A listing agent shall provide the disclosure form set forth in subdivision four of this section to a seller or landlord prior to entering into a listing agreement with the seller or landlord and shall obtain a signed acknowledgment from the seller or landlord, except as provided in paragraph e of this subdivision.

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, 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.

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, 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, landlord or the listing agent, except as provided in paragraph e of this subdivision.

d. The agent shall provide to the buyer, seller, tenant or landlord a copy of the signed acknowledgment and shall maintain a copy of the signed acknowledgment for not less than three years.

e. If the seller, buyer, landlord or tenant refuses to sign an acknowledgment of receipt pursuant to this subdivision, the agent shall set forth under oath or affirmation a written declaration of the facts of the refusal and shall maintain a copy of the declaration for not less than three years.

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. **A representation agreement must be entered into prior to the presentation of the offer to purchase to the seller or seller's agent.** 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 list-

ing 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 informed 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 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:

( ) Seller as a	( ) Buyer as a
(check relationship below)	(check relationship below)
( ) Seller's agent	( ) Buyer's agent
( ) Broker's agent	( ) Broker's agent

( ) Dual agent **with designated sales 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 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 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
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~~] **the representation** agreement between the agent and the tenant. **A representation agreement must be entered into prior to or immediately after the tenant's agent shows any property to the tenant for the first time.** 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 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 (check relationship below)	( ) Tenant as a (check relationship below)
( ) Landlord's agent	( ) Tenant's agent
( ) Broker's agent	( ) Broker's agent
( ) Dual agent **with designated sales 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:

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

_____

_____

Date: _____ Date: _____

5. This section shall not apply to a real estate licensee who works with a buyer, seller, tenant or landlord in accordance with terms agreed to by the licensee and buyer, seller, tenant or landlord and in a capacity other than as an agent, as such term is defined in paragraph a of subdivision one of this section.

6. [~~Nothing~~] **Except as outlined in section four hundred forty-three-b of this article, nothing** in this section shall be construed to limit or alter the application of the common law of agency with respect to residential real estate transactions.

§ 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.