

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:

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 brokers' 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.

LBD14491-01-4

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

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

5 § 443-b. Agency relationships. 1. Definitions. For the purposes of
6 this section:

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

10 (b) "Designated sales agent" means a licensed real estate salesperson
11 or associate broker, working under the supervision of a real estate
12 broker, who has been assigned to represent a client when a different
13 client is also represented by such real estate broker in the same trans-
14 action.

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

21 2. Application. The agency relationships and requirements as specified
22 in this section or in rules or regulations promulgated by the secretary
23 of state shall supersede any agency relationships and requirements
24 between a licensee and a party to a residential real estate transaction
25 which are based upon common law principles of agency to the extent that
26 those common law principles are inconsistent with those specified in
27 this section. This section shall apply only to transactions involving
28 residential real property.

29 3. Individual dual agency prohibited. No individual real estate
30 broker, associate real estate broker or real estate salesperson may act
31 as a buyer's agent and seller's agent in the same transaction. No real
32 estate broker, associate real estate broker or real estate salesperson
33 may act as a tenant's agent and landlord's agent in the same trans-
34 action. However, a real estate broker may assign a separate real estate
35 salesperson or associate broker working under their supervision to act
36 as a designated sales agent to represent a client when a different
37 client is also represented by such real estate broker in the same trans-
38 action.

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

41 (i) Be written in clear and unambiguous language.

42 (ii) Fully set forth all material terms, including the terms of licen-
43 see compensation.

44 (iii) Have a definite duration or expiration date, showing dates of
45 inception and expiration.

46 (iv) Be signed by all parties to the agreement.

47 (b) No real estate broker, associate real estate broker or real estate
48 salesperson shall locate residential real property for a tenant and/or
49 negotiate on behalf of the tenant unless the real estate broker, associ-
50 ate real estate broker or real estate salesperson has entered into a
51 representation agreement to represent the tenant as a tenant's agent.
52 The representation agreement must be entered into prior to or immedi-
53 ately after a licensee shows any property to a tenant for the first time.

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

1 unless the real estate broker, associate real estate broker, or real
2 estate salesperson has entered into a written representation agreement
3 to represent the buyer as a buyer's agent. The representation agreement
4 must be entered into no later than the presentation of the offer to
5 purchase 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 or
8 demand compensation from a tenant in connection with a residential real
9 property transaction unless the real estate broker, associate real
10 estate broker or real estate salesperson has entered into a signed
11 representation agreement with the tenant to act as a tenant's agent in
12 the transaction.

13 (b) No real estate broker, associate real estate broker or real estate
14 salesperson shall collect or demand compensation from a buyer in
15 connection with a residential real property transaction unless the real
16 estate broker, associate real estate broker or real estate salesperson
17 has entered into a signed representation agreement with the buyer to act
18 as the 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 the real estate broker,
27 associate real estate broker or real estate salesperson has the written
28 permission or authorization of the owner or the owner's authorized
29 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 or the
33 owner's authorized representative under this section and does not have a
34 listing agreement with the owner or the owner's authorized represen-
35 tative, the real estate broker, associate real estate broker or real
36 estate salesperson shall not enter into a representation agreement with
37 and/or be compensated by any tenant in connection with the residential
38 real property offered or advertised for lease.

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

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

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

52 b. "Buyer" means a transferee in a residential real property trans-
53 action and includes a person who executes an offer to purchase residen-
54 tial real property from a seller through an agent, or who has engaged
55 the services of an agent with the object of entering into a residential
56 real property transaction as a transferee.

1 c. "Buyer's agent" means an agent who contracts to locate residential
2 real property for a buyer or who finds a buyer for a property and
3 presents an offer to purchase to the seller or seller's agent and nego-
4 tiates on behalf of the buyer.

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

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

11 f. "Residential real property" means real property used or occupied,
12 or intended to be used or occupied, wholly or partly, as the home or
13 residence of one or more persons improved by (i) a one-to-four family
14 dwelling or (ii) condominium or cooperative apartments but shall not
15 refer to unimproved real property upon which such dwellings are to be
16 constructed.

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

21 h. "Seller's agent" means a listing agent who acts alone, or an agent
22 who acts in cooperation with a listing agent, acts as a seller's suba-
23 gent or acts as a broker's agent to find or obtain a buyer for residen-
24 tial real property.

25 i. ~~"Dual agent" means an agent who is acting as a buyer's agent and a~~
26 ~~seller's agent or a tenant's agent and a landlord's agent in the same~~
27 ~~transaction.~~ "Representation agreement" means a written contract
28 between a buyer or tenant of residential real property and a licensee,
29 by which the licensee has been authorized to act as an agent on behalf
30 of the buyer or tenant to locate residential real property, present an
31 offer to purchase or lease to the seller, seller's agent, landlord or
32 landlord's agent, and negotiates on behalf of the buyer or tenant.

33 j. "Designated sales agent" means a licensed real estate salesperson
34 or associate broker, working under the supervision of a real estate
35 broker, who has been assigned to represent a client when a different
36 client is also represented by such real estate broker in the same trans-
37 action.

38 k. "Broker's agent" means an agent that cooperates or is engaged by a
39 listing agent, buyer's agent or tenant's agent (but does not work for
40 the same firm as the listing agent, buyer's agent or tenant's agent) to
41 assist the listing agent, buyer's agent or tenant's agent in locating a
42 property to sell, buy or lease respectively, for the listing agent's
43 seller or landlord, the buyer agent's buyer or the tenant's agent
44 tenant. The broker's agent does not have a direct relationship with the
45 seller, buyer, landlord or tenant and the seller, buyer, landlord or
46 tenant can not provide instructions or direction directly to the
47 broker's agent. Therefore, the seller, buyer, landlord or tenant do not
48 have vicarious liability for the acts of the broker's agent. The listing
49 agent, buyer's agent or tenant's agent do provide direction and instruc-
50 tion to the broker's agent and therefore the listing agent, buyer's
51 agent or tenant's agent will have liability for the broker's agent.

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

1 m. "Landlord" means the lessor in a residential real property trans-
2 action, and includes an owner who lists residential real property for
3 lease with an agent, whether or not a lease results, or who receives an
4 offer to lease residential real property.

5 n. "Tenant's agent" means an agent who contracts to locate residential
6 real property for a tenant or who finds a tenant for a property and
7 presents an offer to lease to the landlord or landlord's agent and nego-
8 tiates on behalf of the tenant.

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

13 p. [~~"Advance consent to dual agency" means written informed consent
14 signed by the seller/landlord or buyer/tenant that the listing agent
15 and/or buyer's agent may act as a dual agent for that seller/landlord
16 and a buyer/tenant for residential real property which is the subject of
17 a listing agreement.~~

18 ~~q.~~] "Advance consent to dual agency with designated sales agents"
19 means written informed consent signed by the seller/landlord or
20 buyer/tenant that indicates the name of the agent appointed to represent
21 the seller/landlord or buyer/tenant as a designated sales agent for
22 residential real property which is the subject of a listing agreement.

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

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

30 b. A seller's agent or landlord's agent shall provide the disclosure
31 form set forth in subdivision four of this section to a buyer, buyer's
32 agent, tenant or tenant's agent at the time of the first substantive
33 contact with the buyer or tenant and shall obtain a signed acknowledge-
34 ment from the buyer or tenant, except as provided in paragraph e of this
35 subdivision.

36 c. A buyer's agent or tenant's agent shall provide the disclosure form
37 to the buyer or tenant prior to entering into an agreement to act as the
38 buyer's agent or tenant's agent and shall obtain a signed acknowledgment
39 from the buyer or tenant, except as provided in paragraph e of this
40 subdivision. A buyer's agent or tenant's agent shall provide the form to
41 the seller, seller's agent, landlord or landlord's agent at the time of
42 the first substantive contact with the seller or landlord and shall
43 obtain a signed acknowledgment from the seller, landlord or the listing
44 agent, except as provided in paragraph e of this subdivision.

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

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

53 f. A seller/landlord or buyer/tenant may provide advance informed
54 consent to [~~dual agency and~~] dual agency with designated sales agents by
55 indicating the same on the form set forth in subdivision four of this
56 section.

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

3 NEW YORK STATE DISCLOSURE FORM
4 FOR
5 BUYER AND SELLER
6 THIS IS NOT A CONTRACT

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

13 Throughout the transaction you may receive more than one disclosure
14 form. The law may require each agent assisting in the transaction to
15 present you with this disclosure form. A real estate agent is a person
16 qualified to advise about real estate.

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

19 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS
20 SELLER'S AGENT

21 A seller's agent is an agent who is engaged by a seller to represent
22 the seller's interests. The seller's agent does this by securing a buyer
23 for the seller's home at a price and on terms acceptable to the seller.
24 A seller's agent has, without limitation, the following fiduciary duties
25 to the seller: reasonable care, undivided loyalty, confidentiality, full
26 disclosure, obedience and duty to account. A seller's agent does not
27 represent the interests of the buyer. The obligations of a seller's
28 agent are also subject to any specific provisions set forth in an agree-
29 ment between the agent and the seller. In dealings with the buyer, a
30 seller's agent should (a) exercise reasonable skill and care in perform-
31 ance of the agent's duties; (b) deal honestly, fairly and in good faith;
32 and (c) disclose all facts known to the agent materially affecting the
33 value or desirability of property, except as otherwise provided by law.

34 BUYER'S AGENT

35 A buyer's agent is an agent who is engaged by a buyer to represent the
36 buyer's interests. The buyer's agent does this by negotiating the
37 purchase of a home at a price and on terms acceptable to the buyer. A
38 buyer's agent has, without limitation, the following fiduciary duties to
39 the buyer: reasonable care, undivided loyalty, confidentiality, full
40 disclosure, obedience and duty to account. A buyer's agent does not
41 represent the interests of the seller. The obligations of a buyer's
42 agent are also subject to any specific provisions set forth in [~~an~~ the
43 representation agreement between the agent and the buyer. A represen-
44 tation agreement must be entered into prior to the presentation of the
45 offer to purchase to the seller or seller's agent. In dealings with the
46 seller, a buyer's agent should (a) exercise reasonable skill and care in
47 performance of the agent's duties; (b) deal honestly, fairly and in good
48 faith; and (c) disclose all facts known to the agent materially affect-
49 ing the buyer's ability and/or willingness to perform a contract to
50 acquire seller's property that are not inconsistent with the agent's
51 fiduciary duties to the buyer.

52 BROKER'S AGENTS

53 A broker's agent is an agent that cooperates or is engaged by a list-
54 ing agent or a buyer's agent (but does not work for the same firm as the
55 listing agent or buyer's agent) to assist the listing agent or buyer's
56 agent in locating a property to sell or buy, respectively, for the list-

1 ing agent's seller or the buyer agent's buyer. The broker's agent does
2 not have a direct relationship with the buyer or seller and the buyer or
3 seller can not provide instructions or direction directly to the
4 broker's agent. The buyer and the seller therefore do not have vicarious
5 liability for the acts of the broker's agent. The listing agent or
6 buyer's agent do provide direction and instruction to the broker's agent
7 and therefore the listing agent or buyer's agent will have liability for
8 the acts of the broker's agent.

9 ~~[DUAL AGENT~~

10 ~~A real estate broker may represent both the buyer and the seller if~~
11 ~~both the buyer and seller give their informed consent in writing. In~~
12 ~~such a dual agency situation, the agent will not be able to provide the~~
13 ~~full range of fiduciary duties to the buyer and seller. The obligations~~
14 ~~of an agent are also subject to any specific provisions set forth in an~~
15 ~~agreement between the agent, and the buyer and seller. An agent acting~~
16 ~~as a dual agent must explain carefully to both the buyer and seller that~~
17 ~~the agent is acting for the other party as well. The agent should also~~
18 ~~explain the possible effects of dual representation, including that by~~
19 ~~consenting to the dual agency relationship the buyer and seller are~~
20 ~~giving up their right to undivided loyalty. A buyer or seller should~~
21 ~~carefully consider the possible consequences of a dual agency relation-~~
22 ~~ship before agreeing to such representation. A seller or buyer may~~
23 ~~provide advance informed consent to dual agency by indicating the same~~
24 ~~on this form.]~~

25 DUAL AGENT

26 WITH

27 DESIGNATED SALES AGENTS

28 If the buyer and the seller provide their informed consent in writing,
29 the principals and the real estate broker who represents both parties as
30 a dual agent may designate a sales agent to represent the buyer and
31 another sales agent to represent the seller to negotiate the purchase
32 and sale of real estate. A sales agent works under the supervision of
33 the real estate broker. With the informed consent of the buyer and the
34 seller in writing, the designated sales agent for the buyer will func-
35 tion as the buyer's agent representing the interests of and advocating
36 on behalf of the buyer and the designated sales agent for the seller
37 will function as the seller's agent representing the interests of and
38 advocating on behalf of the seller in the negotiations between the buyer
39 and seller. A designated sales agent cannot provide the full range of
40 fiduciary duties to the buyer or seller. The designated sales agent must
41 explain that like the dual agent under whose supervision they function,
42 they cannot provide undivided loyalty. A buyer or seller should careful-
43 ly consider the possible consequences of a dual agency relationship with
44 designated sales agents before agreeing to such representation. A seller
45 or buyer may provide advance informed consent to dual agency with desig-
46 nated sales agents by indicating the same on this form.

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

- 51 () Seller as a () Buyer as a
52 (check relationship below) (check relationship below)
53 () Seller's agent () Buyer's agent
54 () Broker's agent () Broker's agent

1 () Dual agent with () Dual agent with designated sales agents
2 designated sales
3 agent

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

6 [~~() Advance informed consent dual agency.~~]

7 () Advance informed consent to dual agency with designated sales
8 agents.

9 If dual agent with designated sales agents is indicated above:
10 _____ is appointed to represent the buyer; and
11 _____ is appointed to represent the seller in this
12 transaction.

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

15 _____

16 _____

17 Date: _____ Date: _____

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

20 NEW YORK STATE DISCLOSURE FORM
21 FOR
22 LANDLORD AND TENANT

23 THIS IS NOT A CONTRACT

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

30 Throughout the transaction you may receive more than one disclosure
31 form. The law may require each agent assisting in the transaction to
32 present you with this disclosure form. A real estate agent is a person
33 qualified to advise about real estate.

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

36 DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIPS
37 LANDLORD'S AGENT

38 A landlord's agent is an agent who is engaged by a landlord to repre-
39 sent the landlord's interest. The landlord's agent does this by securing
40 a tenant for the landlord's apartment or house at a rent and on terms
41 acceptable to the landlord. A landlord's agent has, without limitation,
42 the following fiduciary duties to the landlord: reasonable care, undi-
43 vided loyalty, confidentiality, full disclosure, obedience and duty to
44 account. A landlord's agent does not represent the interests of the
45 tenant. The obligations of a landlord's agent are also subject to any
46 specific provisions set forth in an agreement between the agent and the
47 landlord. In dealings with the tenant, a landlord's agent should (a)
48 exercise reasonable skill and care in performance of the agent's duties;
49 (b) deal honestly, fairly and in good faith; and (c) disclose all facts

1 known to the agent materially affecting the value or desirability of
2 property, except as otherwise provided by law.

3 TENANT'S AGENT

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

21 BROKER'S AGENTS

22 A broker's agent is an agent that cooperates or is engaged by a list-
23 ing agent or a tenant's agent (but does not work for the same firm as
24 the listing agent or tenant's agent) to assist the listing agent or
25 tenant's agent in locating a property to rent or lease for the listing
26 agent's landlord or the tenant agent's tenant. The broker's agent does
27 not have a direct relationship with the tenant or landlord and the
28 tenant or landlord can not provide instructions or direction directly to
29 the broker's agent. The tenant and the landlord therefore do not have
30 vicarious liability for the acts of the broker's agent. The listing
31 agent or tenant's agent do provide direction and instruction to the
32 broker's agent and therefore the listing agent or tenant's agent will
33 have liability for the acts of the broker's agent.

34 [~~DUAL AGENT~~]

35 ~~A real estate broker may represent both the tenant and the landlord if~~
36 ~~both the tenant and landlord give their informed consent in writing. In~~
37 ~~such a dual agency situation, the agent will not be able to provide the~~
38 ~~full range of fiduciary duties to the landlord and the tenant. The obli-~~
39 ~~gations of an agent are also subject to any specific provisions set~~
40 ~~forth in an agreement between the agent, and the tenant and landlord. An~~
41 ~~agent acting as a dual agent must explain carefully to both the landlord~~
42 ~~and tenant that the agent is acting for the other party as well. The~~
43 ~~agent should also explain the possible effects of dual representation,~~
44 ~~including that by consenting to the dual agency relationship the land-~~
45 ~~lord and tenant are giving up their right to undivided loyalty. A land-~~
46 ~~lord and tenant should carefully consider the possible consequences of a~~
47 ~~dual agency relationship before agreeing to such representation. A~~
48 ~~landlord or tenant may provide advance informed consent to dual agency~~
49 ~~by indicating the same on this form.]~~

DUAL AGENT
WITH
DESIGNATED SALES AGENTS

4 If the tenant and the landlord provide their informed consent in writ-
5 ing, the principals and the real estate broker who represents both
6 parties as a dual agent may designate a sales agent to represent the
7 tenant and another sales agent to represent the landlord. A sales agent
8 works under the supervision of the real estate broker. With the informed
9 consent in writing of the tenant and the landlord, the designated sales
10 agent for the tenant will function as the tenant's agent representing
11 the interests of and advocating on behalf of the tenant and the desig-
12 nated sales agent for the landlord will function as the landlord's agent
13 representing the interests of and advocating on behalf of the landlord
14 in the negotiations between the tenant and the landlord. A designated
15 sales agent cannot provide the full range of fiduciary duties to the
16 landlord or tenant. The designated sales agent must explain that like
17 the dual agent under whose supervision they function, they cannot
18 provide undivided loyalty. A landlord or tenant should carefully consid-
19 er the possible consequences of a dual agency relationship with desig-
20 nated sales agents before agreeing to such representation. A landlord
21 or tenant may provide advance informed consent to dual agency with
22 designated sales agents by indicating the same on this form.

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

- 26 () Landlord as a () Tenant as a
- 27 (check relationship below) (check relationship below)
- 28 () Landlord's agent () Tenant's agent
- 29 () Broker's agent () Broker's agent
- 30 () Dual agent with () Dual agent with designated sales agents
- 31 designated sales
- 32 agent

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

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

38 If dual agent with designated sales agents is indicated above:
39 _____ is appointed to represent the tenant; and
40 _____ is appointed to represent the landlord in
41 this transaction.

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

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

45 _____

46 _____

1 Date: _____

Date: _____

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

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

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