Real Estate License Law

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Licensing of Real Estate Brokers and Real Estate Salespersons

Article 12-A Real Property Law

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ARTICLE 12-A
REAL PROPERTY LAW

§440. Definitions

1. Whenever used in this article "real estate broker" means any person, firm, limited liability company or corporation, who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale, at auction or otherwise, exchange, purchase or rental of an estate or interest in real estate, or collects or offers or attempts to collect rent for the use of real estate, or negotiates or offers or attempts to negotiate, a loan secured or to be secured by a mortgage, other than a residential mortgage loan, as defined in §590 of the Banking Law, or other incumbrance upon or transfer of real estate, or is engaged in the business of a tenant relocator, or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of condominium property originally sold pursuant to the provisions of the General Business Law governing real estate syndication offerings. In the sale of lots pursuant to the provisions of article 9-A of this chapter, the term "real estate broker" shall also include any person, partnership, association or corporation employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon a commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange, of any such lot or parcel of real estate. For purposes of this subdivision the term, "interest in real estate" shall include the sale of a business wherein the value of the real estate transferred as part of the business is not merely incidental to the transaction, and shall not include the assignment of a lease, and further, the transaction itself is not otherwise subject to regulation under state or federal laws governing the sale of securities. In connection with the sale of a business the term "real estate broker" shall not include a person, firm or corporation registered pursuant to the provisions of article 23-A of the General Business Law or federal securities laws.

2. "Associate real estate broker" means a licensed real estate broker who shall by choice elect to work under the name and supervision of another individual broker or another broker who is licensed under a partnership, trade name, limited liability company or corporation. Such individual shall retain his or her license as a real estate broker as provided for in this article; provided, however, that the practice of real estate sales and brokerage by such individual as an associate broker shall be governed exclusively by the provisions of this article as they pertain to real estate salespersons. Nothing contained herein shall preclude an individual who elects to be licensed as an associate broker from also retaining a separate real estate broker's license under an individual, partnership, trade name, limited liability company or corporation.

3. "Real estate salesperson" means a person associated with a licensed real estate broker to list for sale, sell or offer for sale, at auction or otherwise, to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate, or to negotiate a loan on real estate other than a mortgage loan as defined in §590 of the Banking Law, or to lease or rent or offer to lease, rent or place for rent any real estate, or collects or offers or attempts to collect rent for the use of real estate for or in behalf of such real estate broker, or who, notwithstanding any other provision of law, performs any of the above stated functions with respect to the resale of a condominium property originally sold pursuant to the provisions of the General Business Law governing real estate syndication offerings.

4. "Tenant relocator" means any person, firm, corporation, partnership, limited liability company or any legal entity whatsoever, which, for another and for a fee, commission or other valuable consideration, supervises, organizes, arranges, coordinates, handles or is otherwise in charge of or responsible for the relocation of commercial or residential tenants from buildings or structures that are to be demolished, rehabilitated, remodeled, or otherwise structurally altered.

5. "Association, associated; or associated with" whenever used in this article shall be deemed to make reference to a salesperson's relationship with his or her broker. Nothing in this article shall be deemed or construed to be indicative or determinative of the legal relationship of a salesperson to a broker nor shall any provision of this article be deemed or construed to alter or otherwise affect the legal responsibility of a real estate broker to third parties for the acts of anyone associated with such broker pursuant to this article.

6. "Office manager" means a licensed associate real estate broker who shall by choice elect to work as an office manager under the name and supervision of another individual broker or another broker who is licensed under a partnership, trade name, limited liability company or corporation. Such individual shall retain his or her license as a real estate broker as provided for in this article; provided, however, that the practice of real estate sales and brokerage by such individual as an associate broker shall be governed exclusively by the provisions of this article as they pertain to real estate salesmen. Nothing contained in this subdivision shall preclude an individual who is licensed as an associate broker who elects to work as an office manager from also retaining a separate real estate broker's license under an individual, partnership, trade name, limited liability company or corporation.

§440-a. License required for real estate brokers and salespersons

No person, co-partnership, limited liability company or corporation shall engage in or follow the business or occupation of, or hold himself or itself out or act temporarily or otherwise as a real estate broker or real estate salesperson in this State without first procuring a license therefor as provided in this article. No person shall be entitled to a license as a real estate broker under this article, either as an individual or as a member of a co-partnership, or as a member or manager of a limited liability company, or as an officer of a corporation, unless he or she is 20 years of age or over, a citizen of the United States or an alien lawfully admitted for permanent residence in the United States. No person shall be entitled to a license as a real estate salesperson under this article unless he or she is over the age of 18 years. No person shall be entitled to a license as a real estate broker or real estate salesperson under this article who has been convicted in this state or elsewhere of a felony, of a sex offense, as defined in subdivision two of §168-A of the Correction Law or any offense committed outside of this State which would constitute a sex offense, or a sexually violent offense, as defined in subdivision three of §168-A of the Correction Law or any offense committed outside this State which would constitute a sexually violent offense, and who has not subsequent to such conviction received executive pardon therefor or a certificate of relief from disabilities or a certificate of good conduct pursuant to article 23 of the Correction Law, to remove the disability under this section because of such conviction. No person shall be entitled to a license as a real estate broker or real estate salesperson under this article who does not meet the requirements of section 3-503 of the General Obligations Law.

Notwithstanding the above, tenant associations, and not-for-profit corporations authorized in writing by the commissioner of the department of the City of New York charged with enforcement of the housing maintenance code of such city to manage residential property owned by such city or appointed by a court of competent jurisdiction to manage residential property owned by such city shall be exempt from the licensing provisions of this section with respect to the properties so managed.

§440-b. Licenses in Putnam County

On and after the first day of July, 1934, no person, co-partnership or corporation shall engage in or follow the business or occupation of, or hold himself or itself out temporarily or otherwise as a real estate broker or real estate salesperson in the County of Putnam, without first procuring a license therefor as provided in this article, except that such license in such county shall be granted and issued, without the written examination provided in this article, to a person, co-partnership or corporation who was engaged in business as a real estate broker or real estate salesperson in such county prior to the first day of January, 1934.

§441. Application for license

1. Form.

(a) Any person, co-partnership, limited liability company or corporation desiring to act as a real estate broker or any person desiring to act as a real estate salesperson on or after the first day of October, 1922, shall file with the Department of State at its office in Albany an application for the kind of license desired, in such form and detail as such department shall prescribe and conforming to the requirements of §3-503 of the General Obligations Law, setting forth the following, if the application be for a broker's license:

(i) The name and residence address of the applicant, and if an individual the name under which he intends to conduct business.

(ii) If the applicant be a co-partnership the name and residence address of each member thereof and the name under which the business is to be conducted; or, if the applicant be a limited liability company, the name of the company, and the name and residence of each of its members; or, if the applicant be a corporation, the name of the corporation and the name and residence address of each of its officers.

(iii) The place or places, including the city, town or village, with the street and number, where the business is to be conducted.

(iv) The business or occupation theretofore engaged in by the applicant, or, if a co-partnership, by each member thereof, or, if a limited liability company, by each member thereof, or, if a corporation, by each officer thereof, for a period of two years, immediately preceding the date of such application, setting forth the place or places where such business or occupation was engaged in and the name or names of employers, if any.

(v) The form, information and statement required by §3-503 of the General Obligations Law.

(b) Such further information as the department may reasonably require shall be furnished by the applicant including sufficient proof of having taken and passed a written examination and answered such questions as may be prepared by the department to enable it to determine the trustworthiness of the applicant if an individual, or of each member of a co-partnership or each member of a limited liability company or each officer of a corporation for whom a license as a broker is asked, and his or their competency to transact the business of real estate broker in such a manner as to safeguard the interests of the public. In determining competency, the department shall require proof that the person being tested to qualify to apply for a broker's license has a fair knowledge of the English language, a fair understanding of the general purposes and general legal effect of deeds, mortgages, land contracts of sale, and leases, a general and fair understanding of the obligations between principal and agent, as well as of the provisions of this section. The applicant must also furnish proof that he has attended for at least 120 hours and has successfully completed a real estate course or courses approved by the Secretary of State as to method and content and supervision which approval may be withdrawn if in the opinion of the Secretary of State said course or courses are not being conducted properly as to method, content and supervision, and that either the applicant has actively participated in the general real estate brokerage business as a licensed real estate salesperson under the supervision of a licensed real estate broker for a period of not less than two years or has had the equivalent experience in general real estate business for a period of at least three years, the nature of which experience shall be established by affidavit duly sworn to under oath and/or other and further proof required by the Department of State. Computer-based and distance-learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the applicant for the specified time period. Notwithstanding the foregoing authority to approve computer-based and distance-learning courses, the department may prescribe that specified subjects or hours must be presented in a classroom setting.

(c) In the event the applicant shall be a licensed salesperson under this article and shall have submitted acceptable proof pursuant to the provisions of either paragraph (d) of subdivision 1-A of this section or paragraph (a) of subdivision 3 of this section of having attended and successfully completed 75 hours of an approved real estate course or courses within eight years of the date of the application, the department may accept and credit same against the 120 hours required hereunder.

1-A. (a) Every application for a real estate salesperson's license shall set forth:

(i) The name and residence address of the applicant.

(ii) The name and principal business address of the broker with whom he is to be associated.

(iii) The business or occupation engaged in for the two years immediately preceding the date of the application, setting forth the place or places where such business or occupation was engaged in, and the name or names of employers if any.

(iv) The length of time he has been engaged in the real estate business.

(v) The form, information and statement required by §3-503 of the General Obligations Law.

(b) Each applicant for a salesperson's license shall provide such further information as the department may reasonably require, appearing at such time and place as may be designated by the department, to take a written examination and answer such questions as may be prepared by the department to enable it to determine the trustworthiness of the applicant and the applicant's competence to transact the business of real estate salesperson in such a manner as to safeguard the interests of the public, including the applicant's working knowledge of the basic concepts of law pertaining to contracts, real property, agency and this article which govern conduct of such business, mastery of basic skills needed to perform the applicant's duties, working knowledge of the ethical obligations of a real estate salesperson, and knowledge of the provisions of the General Obligations Law pertaining to performance of the applicant's duties.

(c) Each application for either a broker's or salesperson's license under this article shall be subscribed by the applicant; or if made by a co-partnership it shall be subscribed by a member thereof, or if made by a corporation it shall be subscribed by an officer thereof, and shall conform to the requirements of §3-503 of the General Obligations Law. Each application shall contain an affirmation by the person so subscribing that the statements therein are true under the penalties of perjury. An application for a license shall be accompanied by the appropriate license fee, as hereinafter prescribed in this article.

(d) Anything to the contrary herein notwithstanding, on and after the effective date of this paragraph, no salesperson's license or conditional license shall be issued by the department unless the application therefor has been accompanied by proof that prior to such application the applicant has attended at least 75 hours and successfully completed a real estate course or courses approved by the Secretary of State as to method and content and supervision, which approval may be withdrawn if in the opinion of the Secretary of State said course or courses are not properly conducted as to method, content and supervision. Computer-based and distance-learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the applicant for the specified time period. Notwithstanding the foregoing authority to approve computer-based and distance-learning courses, the department may prescribe that specified subjects or hours must be presented in a classroom setting

2. Renewals. Any license granted under the provision hereof may be renewed by the department upon application therefor by the holder thereof, in such form as the department may prescribe and conforming to the requirements of §3-503 of the General Obligations Law, and payment of the fee for such license. In case of application for renewal of license, the department may dispense with the requirement of such statements as it deems unnecessary in view of those contained in the original application for license but may not dispense with the requirements of §3-503 of the General Obligations Law. A renewal period within the meaning of this act is considered as being a period of two years from the date of expiration of a previously issued license. The department shall require any applicant, who does not apply for renewal of license within such period, to qualify by passing the written examination as provided herein, and may require any licensee who has not yet passed the written examination, and who cannot reasonably prove to the satisfaction of the department, that he can meet the competency requirements, to pass the written examination before a renewal of license shall be granted; provided, however, that a person who failed or was unable to renew his license by reason of his induction or enlistment in the armed forces of the United States shall not be required to take or pass such examination.

3. (a) No renewal license shall be issued any licensee under this article for any license period commencing November 1, 1995 unless such licensee shall have within the two year period immediately preceding such renewal attended at least 22½ hours which shall include at least three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property and successfully completed a continuing education real estate course or courses approved by the Secretary of State as to method, content and supervision, which approval may be withdrawn if in the opinion of the Secretary of State such course or courses are not being conducted properly as to method, content and supervision. For those individuals licensed pursuant to subdivision six of section four hundred forty-two-g of this article, in the individual's initial license term, at least eleven hours of the required twenty-two and one-half hours of continuing education shall be completed during the first year of the term. Of those eleven hours, three hours shall pertain to applicable New York State statutes and regulations governing the practice of real estate brokers and salespersons. To establish compliance with the continuing education requirements imposed by this section, licensees shall provide an affidavit, in a form acceptable to the Department of State, establishing the nature of the continuing education acquired and shall provide such further proof as required by the Department of State. The provisions of this paragraph shall not apply to any licensed real estate broker who is engaged full time in the real estate business and who has been licensed under this article prior to July 1, 2008 for at least 15 consecutive years immediately preceding such renewal.

(b) Notwithstanding the provisions of section 401 of the State Administrative Procedure Act, except as provided in this paragraph, no license issued under this article shall continue in effect beyond the period for which it is issued if the proof of attendance required hereunder is not submitted and accepted prior to such expiration date. The department in its discretion may however issue a temporary renewal license for such period of time it deems appropriate to permit the submission of the required proof of attendance when the failure to submit such proof is not due to the fault of the licensee.

(c) The Secretary of State shall promulgate rules establishing the method, content, setting and supervision requirements of the continuing education real estate course or courses provided for in this section. In establishing the requirements for the continuing education course or courses, the Secretary of State shall permit alternatives with respect to content and method of presentation in consideration of the type of brokerage practiced and the availability of the sources of such course or courses in different areas of the state. Each course shall have an established curriculum composed primarily of real estate practice and professional responsibility and ethics and properly prepared written materials of the subject matter

which shall be distributed as part of the course. It shall be taught by a qualified faculty with attorneys presenting legal subjects. Credit shall be awarded on the basis of one hour for each 60 minutes of actual attendance and records shall be maintained of attendance at each session which shall be transmitted to the department at the conclusion of the course. Computer-based and distance learning courses may be approved by the department so long as providers demonstrate the ability to monitor and verify participation by the licensee for the specified time period.

(d) The State real estate board, created pursuant to §442-i of this article, shall not have the power to promulgate any rule, regulation or guidance requiring continuing education for real estate brokers or salespeople except those requirements set forth in subdivisions two and three of §442-k of this article.

4. The fees provided for by this section shall not be refundable.

§441-a. License and pocket card

1. The Department of State, if satisfied of the competency and trustworthiness of the applicant, shall issue and deliver to him a license in such form and manner as the department shall prescribe, but which must set forth the name and principal business address of the licensee, and, in the case of a real estate salesperson, the name and business address of the broker with whom the salesperson is associated.

2. Terms. A license issued or reissued under the provisions of this article shall entitle the person, co- partnership, limited liability company or corporation to act as a real estate broker, or, if the application is for a real estate salesperson's license, to act as a real estate salesperson in this State up to and including the date of the year in which the license by its terms expires.

3. Place of business; business sign required. Except as otherwise provided in this article, each licensed real estate broker shall have and maintain a definite place of business within this State, and shall conspicuously post on the outside of the building in which said office is conducted a sign of a sufficient size to be readable from the sidewalk indicating the name and the business of the applicant as a licensed real estate broker, unless said office shall be located in an office, apartment or hotel building, in which event the name and the words "licensed real estate broker" shall be posted in the space provided for posting of names of occupants of the building, other than the mail box. Where the applicant for a real estate broker's license maintains more than one place of business, the broker shall apply for and the department shall issue a supplemental license for each branch office so maintained upon payment to the Department of State for each supplemental license so issued the same fee prescribed in this article for a license to act as a real estate broker. Each such branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership or manager of a limited liability company holding such license, or a duly appointed office manager. Such fee shall accompany such application and shall be non-refundable. For purposes of this subdivision, the principal residence of a real estate broker or salesperson shall not be deemed a place of business solely because such broker or salesperson shall have included the residence telephone number in his business cards.

4. Display of license. The license of a real estate broker shall be conspicuously displayed in his principal place of business at all times. Licenses issued for branch offices shall be conspicuously displayed therein. The display of a real estate broker's license, the term whereof has expired, by any person, partnership, limited liability company or corporation not duly licensed as a real estate broker for the current license term is prohibited.

5. Change of address. Notice in writing in the manner and form prescribed by the department shall be given the department at its offices in Albany by a licensed real estate broker on his own behalf and on behalf of each salesperson associated with him of any change in his or its principal business address. The filing fee of $10 for each licensee named therein shall accompany such notice. Such change by a licensee without such notification shall operate to suspend his license until such suspension shall be vacated by the department.

6. Pocket card. The department shall prepare, issue and deliver, with the assistance of the Department of Motor Vehicles, to each licensee a pocket card in such form and manner as the department shall prescribe, but which shall contain the photo, name and business address of the licensee, and, in the case of a real estate salesperson, the name and business address of the broker with whom he or she is associated and shall certify that the person whose name appears thereon is a licensed real estate broker or salesperson, as may be. Such cards must be shown on demand. In the case of loss, destruction or damage, the Secretary of State may, upon submission of satisfactory proof, issue a duplicate pocket card upon payment of a fee of $10.

7. License term. From and after the date when this subdivision shall take effect, the term for which a license shall be issued or reissued under this article shall be a period of two years.

8. Death of broker. A license issued to a real estate broker who was, at the time of his death, the sole proprietor of a brokerage office may be used after the death of such licensee by his duly appointed administrator or executor in the name of the estate pursuant to authorization granted by the surrogate under the provisions of the Surrogate's Court Procedure Act for a period of not more than 120 days from the date of death of such licensee in order to complete any unfinished realty transactions in the process of negotiation by the broker or his salespersons existing prior to his decease. There shall be endorsed upon the face of the license, after the name of the decedent, the words "deceased", the date of death and the name of the administrator or executor under whose authority the license is being used. The period of 120 days may be extended upon application to the Secretary of State, for good cause shown, for an additional period not to exceed 120 days. A license expiring during such period or extension shall be automatically renewed and continued in effect during such period or extension. No fee shall be charged for any such license or renewal thereof.

9. Except for changes made on a renewal application, the fee for changing an address on a license shall be $10.

10. Except for changes made on a renewal application, the fee for changing a name or for changing the status of a real estate broker's license shall be $150. The fee for changing a salesperson's name shall be $50.

11. If a real estate salesperson shall leave the service of a real estate broker, the real estate broker shall file a termination of association notice on such form as secretary may designate. The salesperson's license may be endorsed to a new sponsoring broker upon the establishment of a new record of association filed with the Department of State. The fee for filing a record of association shall be $20.

12. Whenever any person licensed as a real estate broker or real estate salesman is convicted in this State or elsewhere of a felony, of a sex offense, as defined in subdivision two of §168-A of the Correction Law or any offense committed outside of this State which would

constitute a sex offense, or a sexually violent offense, as defined in subdivision three of §168-A of the Correction Law or any offense committed outside this State which would constitute a sexually violent offense, such real estate broker or real estate salesman shall within five days of the imposition of sentence, transmit a certified copy of the judgment of conviction to the Department of State.

§441-b. License fees

1. The fee for a license issued or reissued under the provisions of this article entitling a person, co-partnership, limited liability company or corporation to act as a real estate broker shall be $150. The fee for a license issued or reissued under the provisions of this article entitling a person to act as a real estate salesperson shall be $50. Notwithstanding the provisions of subdivision 7 of §441-a of this article, after January 1, 1986, the Secretary of State shall assign staggered expiration dates for outstanding licenses that have been previously renewed on October 31st of each year from the assigned date unless renewed. If the assigned date results in a term that exceeds 24 months, the applicant shall pay an additional prorated adjustment together with the regular renewal fee. The Secretary of State shall assign dates to existing licenses in a manner which shall result in a term of not less than two years.

1-A. The fee for a person to take an examination offered by the Secretary of State pursuant to this article shall be $15. Fees collected for written examinations shall be paid into the licensing examinations services account pursuant to §97-aa of the State Finance Law.

2. Corporations and co-partnerships. If the licensee be a corporation, the license issued to it shall entitle the president thereof or such other officer as shall be designated by such corporation, to act as a real estate broker. For each other officer who shall desire to act as a real estate broker in behalf of such corporation an additional license expiring on the same date as the license of the corporation shall be applied for and issued, as hereinbefore provided, the fee for which shall be the same as the fee required by this section for the license to the corporation. No license as a real estate salesperson shall be issued to any officer of a corporation nor to any manager or member of a limited liability company nor to a member of a co-partnership licensed as a real estate broker. If the licensee be a co-partnership the license issued to it shall entitle one member thereof to act as a real estate broker, and for each other member of the firm who desires to act as a real estate broker an additional license expiring on the same date as the license of the co-partnership shall be applied for and issued, as hereinbefore provided, the fee for which shall be the same as the fee required by this section for the license to the co-partnership. If the licensee be a limited liability company, the license issued to it shall entitle one member thereof or one manager thereof to act as a real estate broker, and for each other member or manager of the firm who desires to act as a real estate broker an additional license expiring on the same date as the license of the limited liability company shall be applied for and issued, as hereinbefore provided, the fee for which shall be the same as the fee required by this section for the license to the limited liability company. In case a person licensed individually as a real estate broker thereafter becomes an officer of a corporation or a member or manager of a limited liability company or a member of a co-partnership an application shall be made in behalf of such corporation, limited liability company or co-partnership for a broker's license for him as its representative for the remainder of the then current license term, provided that the license and pocket card previously issued to the licensee in his individual capacity shall have been returned to the department whereupon the department shall cause a properly signed endorsement to be made without charge on the face of such license and pocket card as to such change of license status and return the license and pocket card to the licensee.

3. Disposition of fees. The Department of State shall on the first day of each month make a verified return to the Department of Taxation and Finance of all fees received by it under this article during the preceding calendar month, stating from what city or county received and by whom and when paid. The department shall on or before the 10th day of each month pay into the State Treasury all monies to its credit on account of fees under this article, at the close of business on the last day of the preceding month.

§441-c. Revocation and suspension of licenses

1. Powers of department.

(a) The Department of State may revoke the license of a real estate broker or salesperson or suspend the same, for such period as the department may deem proper, or in lieu thereof may impose a fine not exceeding $1,000 payable to the Department of State, or a reprimand upon conviction of the licensee of a violation of any provision of this article, or for a material misstatement in the application for such license, or if such licensee has been guilty of fraud or fraudulent practices, or for dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to act as a real estate broker or salesperson, as the case may be. In the case of a real estate broker engaged in the business of a tenant relocator, untrustworthiness or incompetency shall include engaging in any course of conduct including, but not limited to, the interruption or discontinuance of essential building service, that interferes with or disturbs the peace, comfort, repose and quiet enjoyment of a tenant.

(b)(i) The provisions of this paragraph shall apply in all cases of licensed broker or licensed sales- person who have failed, after receiving appropriate notice to comply with a summons, subpoena or warrant relating to a paternity or child support proceeding or is in arrears in payment of child support or combined child and spousal support referred to the department by a court pursuant to the requirements of §244-c of the Domestic Relations Law or pursuant to §458-b or 548-b of the Family Court Act.

(ii) Upon receipt of an order from the court pursuant to one of the foregoing provisions of law, based on arrears in payment of child support or combined child and spousal support, the department, if it finds such person to be so licensed, shall within 30 days of receipt of such order from the court, provide notice to the licensee of, and initiate, a hearing which shall be held by it at least 20 days and no more than 30 days after the sending of such notice to the licensee. The hearing shall be held solely for the purpose of determining whether there exists as of the date of the hearing proof that full payment of all arrears of support established by the order of the court to be due from the licensee have been paid. Proof of such payment shall be a certified check showing full payment of established arrears or a notice issued by the court, or the support collection unit where the order is payable to the support collection unit designated by the appropriate social services district. Such notice shall state that full payment of all arrears of support established by the order of the court to be due have been paid. The licensee shall be given full

opportunity to present such proof of payment from the court or support collection unit at the hearing in person or by counsel. The only issue to be determined by the department as a result of the hearing is whether the arrears have been paid. No evidence with respect to the appropriateness of the court order or ability of the respondent party in arrears to comply with such order shall be received or considered by the department.

(iii) Upon receipt of an order from the court based on failure to comply with a summons, subpoena, or warrant relating to a paternity or child support proceeding, the department, if it finds such person to be so licensed, shall within 30 days of receipt of such order from the court, provide notice to the licensee that his or her license shall be suspended within 60 days unless the conditions in subparagraph (v) of this section are met.

(iv) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license of a real estate broker or salesperson shall be suspended if at the hearing, provided for by subparagraph 2 of this paragraph, the licensee fails to present proof of payment as required by such subdivision. Such suspension shall not be lifted unless the court or the support collection unit, where the court order is payable to the support collection unit designated by the appropriate social services district, issues notice to the department that full payment of all arrears of support established by the order of the court to be due have been paid.

(v) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the license of a real estate broker or a salesperson shall be suspended in accordance with the provisions of subparagraph (iii) of this paragraph unless the court terminates its order to commence suspension proceedings. Such suspension shall not be lifted unless the court issues an order to the department terminating its order to commence suspension proceedings.

(vi) The department shall inform the court of all actions taken hereunder as required by law.

(vii) This paragraph applies to paternity and child support proceedings commenced under, and support obligations paid pursuant to any order of child support or child and spousal support issued under provisions of §236 or 240 of the Domestic Relations Law, or article 4, 5, 5-A or 5-B of the Family Court Act.

(viii) Notwithstanding any inconsistent provision of this article or of any other provision of law to the contrary, the provisions of this paragraph shall apply to the exclusion of any other requirements of this article and to the exclusion of any other requirement of law to the contrary.

2. Determination of department. In the event that the department shall revoke or suspend any such license, or impose any fine or reprimand on the holder thereof, its determination shall be in writing and officially signed. The original of such determination, when so signed, shall be filed in the office of the department and copies thereof shall be served personally or by registered mail upon the broker or salesperson and addressed to the principal place of business of such broker or salesperson, and to the complainant. All brokers' and salesperson's licenses and pocket cards shall be returned to the Department of State within five days after the receipt of notice of a revocation or suspension, or in lieu thereof, the broker or salesperson whose license has been revoked or suspended shall make and file an affidavit in form prescribed by the Department of State, showing that the failure to return such license and pocket card is due either to loss or destruction thereof.

3. The display of a real estate broker's license after the revocation or suspension thereof is prohibited.

4. Whenever the license of a real estate broker or real estate salesperson is revoked by the department, such real estate broker or real estate salesperson shall be ineligible to be relicensed either as a real estate broker or real estate salesperson until after the expiration of a period of one year from the date of such revocation.

§441-d. Salesperson's license suspended by revocation or suspension of employer's license

The revocation or suspension of a broker's license shall operate to suspend the license of each real estate salesperson associated with such broker, pending a change of association of the salesperson or the expiration of the period of suspension of the broker's license. Such suspension of the salesperson's license shall be deemed to be a discontinuance of association with the broker being suspended.

§441-e. Denial of license; complaints; notice of hearing

1. Denial of license. The Department of State shall, before making a final determination to deny an application for a license, notify the applicant in writing of the reasons for such proposed denial and shall afford the applicant an opportunity to be heard in person or by counsel prior to denial of the application. Such notification shall be served personally or by certified mail or in any manner authorized by the Civil Practice Law and Rules. If the applicant is a salesperson or has applied to become a salesperson, the department shall also notify the broker with whom such salesperson is associated, or with whom such salesperson or applicant is about to become associated, of such proposed denial. If a hearing is requested, such hearing shall be held at such time and place as the department shall prescribe. If the applicant fails to make a written request for a hearing within 30 days after receipt of such notification, then the notification of denial shall become the final determination of the department. The department, acting by such officer or person in the department as the Secretary of State may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules. If, after such hearing, the application is denied, written notice of such denial shall be served upon the applicant personally or by certified mail or in any manner authorized by the Civil Practice Law and Rules, and if the applicant is a salesperson, or has applied to become a salesperson, the department shall notify the broker with whom such applicant is associated.

2. Revocation, suspension, reprimands, fines. The Department of State shall, before revoking or suspending any license or imposing any fine or reprimand on the holder thereof or before imposing any fine upon any person not licensed pursuant to this article who is deemed to be in violation of §442-h of this article, and at least 10 days prior to the date set for the hearing, notify in writing the holder of such license or such unlicensed person of any charges made and shall afford such licensee or unlicensed person an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by

delivery of same personally to the licensee, or by mailing same by certified mail to the last known business address of such licensee or unlicensed person, or by any method authorized by the Civil Practice Law and Rules. If said licensee be a salesperson, the department shall also notify the broker with whom he is associated of the charges by mailing notice by certified mail to the broker's last known business address. The hearing on such charges shall be at such time and place as the department shall prescribe.

3. Power to suspend a license. The department, acting by such officer or person in the department as the Secretary of State may designate, shall have the power to suspend a license pending a hearing and to subpoena and bring before the officer or person so designated any person in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules.

§441-f. Judicial review

The action of the Department of State in granting or refusing to grant or to renew a license under this article or in revoking or suspending such a license or imposing any fine or reprimand on the holder thereof or refusing to revoke or suspend such a license or impose any fine or reprimand shall be subject to review by a proceeding brought under and pursuant to article 78 of the Civil Practice Law and Rules at the instance of the applicant for such license, the holder of a license so revoked, suspended, fined or reprimanded or the person aggrieved.

§442. Splitting commissions

1. No real estate broker shall pay any part of a fee, commission or other compensation received by the broker to any person for any service, help or aid rendered in any place in which this article is applicable, by such person to the broker in buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium or cooperative apartment unless such a person be a duly licensed real estate salesperson regularly associated with such broker or a duly licensed real estate broker or a person regularly engaged in the real estate brokerage business in a state outside of New York; provided, however, that notwithstanding any other provision of this section, it shall be permissible for a real estate broker to pay any part of a fee, commission, or other compensation received to an unlicensed corporation or an unlicensed limited liability company if each of its shareholders or members, respectively, is associated as an individual with the broker as a duly licensed associate broker or salesman.

2. Furthermore, notwithstanding any other provision of law, it shall be permissible for a broker properly registered pursuant to the provisions of article 23-A of the General Business Law who earns a commission on the original sale of a cooperative or homeowners association interest in real estate, including condominium units to pay any part of a fee, commission or other compensation received for bringing about such sale to a person whose principal business is not the sale or offering of cooperatives or homeowners association interests in real property, including condominium units in this state but who is either: (i) a real estate salesperson duly licensed under this article who is regularly associated with such broker; (ii) a broker duly licensed under this article; or a person regularly engaged in the real estate brokerage business in a state outside of New York.

Except when permitted pursuant to the foregoing provisions of this section no real estate broker shall pay or agree to pay any part of a fee, commission, or other compensation received by the broker, or due, or to become due to the broker to any person, firm or corporation who or which is or is to be a party to the transaction in which such fee, commission or other compensation shall be or become due to the broker; provided, however, that nothing in this section shall prohibit a real estate broker from offering any part of a fee, commission, or other compensation received by the broker to the seller, buyer, landlord or tenant who is buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate including the resale of a condominium or cooperative apartment. Such fee, commission, or other compensation must not be made to the seller, buyer, landlord or tenant for performing any activity requiring a license under this article.

§442-a. Compensation of salespersons; restrictions

No real estate salesperson in any place in which this article is applicable shall receive or demand compensation of any kind from any person, other than a duly licensed real estate broker with whom he associated, for any service rendered or work done by such salesperson in the appraising, buying, selling, exchanging, leasing, renting or negotiating of a loan upon any real estate.

§442-b. Discontinuance or change of salesperson's association; report

When the association of any real estate salesperson shall have been terminated for any reason whatsoever, his broker shall forthwith notify the Department of State thereof in such manner as the department shall prescribe. Where change of such salesperson's association is the basis for such termination, the salesperson's successor broker shall forthwith notify the department of such change in such manner as the department shall prescribe, such notice to be accompanied by a fee of $10. No real estate salesperson shall perform any act within any of the prohibitions of this article from and after the termination for any cause of his association until he thereafter shall have become associated with a licensed real estate broker.

§442-c. Violations by salespersons; broker's responsibility

No violation of a provision of this article by a real estate salesperson or employee of a real estate broker shall be deemed to be cause for the revocation or suspension of the license of the broker, unless it shall appear that the broker had actual knowledge of such violation or retains the benefits, profits or proceeds of a transaction wrongfully negotiated by his salesperson or employee after notice of the salesperson's or employee's misconduct. A broker shall be guilty of a misdemeanor for having any salesperson associated with his firm who has not secured the required license authorizing such employment.

§442-d. Actions for commissions; license prerequisite

No person, co-partnership, limited liability company or corporation shall bring or maintain an action in any court of this State for the recovery of compensation for services rendered, in any place in which this article is applicable, in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person was a duly licensed real estate broker or real estate salesperson on the date when the alleged cause of action arose.

§442-e. Violations

1. Misdemeanors; triable in court of special sessions. Any person who violates any provision of this article shall be guilty of a misdemeanor. The commission of a single act prohibited by this article shall constitute a violation hereof. All courts of special sessions, within their respective territorial jurisdictions, are hereby empowered to hear, try and determine such crimes, without indictment, and to impose the punishments prescribed by law therefor.

2. Attorney General to prosecute. Criminal actions for violations of this article shall be prosecuted by the Attorney General, or his deputy, in the name of the people of the State, and in any such prosecution the Attorney General, or his deputy, shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein. The Attorney General shall, upon a conviction for a violation of any provision of this article, and within 10 days thereafter, make and file with the Department of State a detailed report showing the date of such conviction, the name of the person convicted and the exact nature of the charge.

3. Penalty recoverable by person aggrieved. In case the offender shall have received any sum of money as commission, compensation or profit by or in consequence of his violation of any provision of this article, he shall also be liable to a penalty of not less than the amount of the sum of money received by him as such commission, compensation or profit and not more than four times the sum so received by him, as may be determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction.

4. In any prosecution under this article, any person, firm or corporation who, for another, performs or offers to perform or attempts or offers to attempt, the performance of any one of the acts set forth in section 440 of this article, shall be presumed to do so for a fee, commission or other valuable consideration, but such presumption shall not arise out of a single transaction, except upon proof of repeated and successive acts, offers or attempts of a like nature.

5. The Secretary of State shall have the power to enforce the provisions of this article and upon complaint of any person, or on his own initiative, to investigate any violation thereof or to investigate the business, business practices and business methods of any person, firm or corporation applying for or holding a license as a real estate broker or salesperson, if in the opinion of the Secretary of State such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the Secretary of State, to supply such information as may be required concerning his or its business, business practices or business methods, or proposed business practices or methods.

6. For the purpose of enforcing the provisions of this article and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the Department of State, acting by such officer or person in the department as the Secretary of State may designate, shall have the power to subpoena and bring before the officer or person so designated any person in this State and require the production of any books or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any person or cause his deposition to be taken with the same fees and mileage and in the same manner as prescribed by law for civil cases in a court of record, except that any applicant or licensee or officer or agent thereof shall not be entitled to such fees and/or mileage. Any person, duly subpoenaed, who fails to obey such subpoena without reasonable cause or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee or such applicant's or licensee's business, business practices and methods or such violations, shall be guilty of a misdemeanor.

7. In any criminal proceeding before any court or grand jury, or upon any investigation before the Department of State for a violation of any of the provisions of this section, the court or grand jury, or the Secretary of State, his deputy or other officer conducting the investigation, may confer immunity, in accordance with the provisions of §50.20 or 190.40 of the Criminal Procedure Law.

8. Notwithstanding any inconsistent provision of law, with respect to violations of §442-h of this article, the Secretary of State is authorized, upon the complaint of any person or on his or her own initiative, to investigate and prosecute violations of the provisions of such section by persons not licensed pursuant to this article and may impose a fine not exceeding $150 for the first violation, not exceeding $500 for a second violation, and not exceeding $1,000 for a third and each subsequent violation. The Attorney General, acting on behalf of the Secretary of State, may commence an action or proceeding in a court of competent jurisdiction to obtain a judgment against such unlicensed person in an amount equal to that imposed as a fine.

§442-f. Saving clause

The provisions of this article shall not apply to receivers, referees, administrators, executors, guardians or other persons appointed by or acting under the judgment or order of any court; or public officers while performing their official duties, or attorneys at law.

§442-g. Nonresident licensees

1. A nonresident of this State may become a real estate broker or a real estate salesperson by conforming to all of the provisions of this article, except that a nonresident broker regularly engaged in the real estate business as a vocation who is licensed and maintains a definite place of business in another state, which offers the same privileges to the licensed brokers of this State, shall not be required to maintain a place of business within this State. Anything to the contrary herein notwithstanding, if any state prohibits or restricts the right of a resident of this State to become a licensed nonresident real estate broker or salesperson, then the issuance of such a license to an applicant resident in such state shall be similarly restricted. The Department of State shall recognize the license issued to a real estate broker or salesperson by another state as satisfactorily qualifying him for license as broker or salesperson, as the case may be, under this section; provided that the laws of the state of which he is a resident require that applicants for licenses as real estate brokers and salespersons shall establish their competency by written examinations but permit licenses to be issued to residents of the State of New York duly licensed under this article, without examination. If the applicant is a resident of a state which has not such requirement then the applicant must meet the examination requirement as provided herein and the Department of State shall issue a license to such nonresident broker or salesperson upon payment of the license fee and the filing by the applicant with the department of a certified copy of the applicant's license issued by such other state.

2. Every nonresident applicant shall file with his application or renewal application an irrevocable consent on a form prescribed by the Department of State submitting himself to the jurisdiction of the courts of this State and designating the Secretary of State of the State of New York as his agent upon whom may be served any summons, subpoena

or other process against him in any action or special proceeding. Such process may issue in any court in this State having jurisdiction of the subject matter, and the process shall set forth that the action or special proceeding is within the jurisdiction of the court.

3. Service of such process upon the Secretary of State shall be made by personally delivering to and leaving with him or his deputy or with any person authorized by the Secretary of State to receive such service, at the office of the Department of State in the City of Albany, duplicate copies of such process together with a fee of $5 if the action is solely for the recovery of a sum of money not in excess of $200 and the process is so endorsed, and a fee of $10 in any other action or proceeding, which fee shall be a taxable disbursement. If such process is served upon behalf of a county, city, town or village, or other political subdivision of the State, the fee to be paid to the Secretary of State shall be $5, irrespective of the amount involved or the nature of the action on account of which such service of process is made. If the cost of registered mail for transmitting a copy of the process shall exceed $2, an additional fee equal to such excess shall be paid at the time of service of such process. Proof of service shall be by affidavit of compliance with this subdivision filed by or on behalf of the plaintiff together with the process, within 10 days after such service, with the clerk of the court in which the action or special proceeding is pending. Service made as provided in this section shall be complete 10 days after such papers are filed with the clerk of the court and shall have the same force and validity as if served on him personally within the state and within the territorial jurisdiction of the court from which the process issues.

4. The Secretary of State shall promptly send one of such copies by registered mail, return receipt requested, to the nonresident broker or nonresident salesperson at the post office address of his main office as set forth in the last application filed by him.

5. Nothing in this section shall effect the right to serve process in any other manner permitted by law.

6. Notwithstanding any other provisions of this article, the Department of State shall grant a real estate broker or a real estate salesman license to an applicant who is a member of the household of a member of the armed forces of the United States, National Guard or Reserves and was a member of such household before such member of the armed forces relocated to the state who submits satisfactory evidence of licensure, certification or registration to practice an equivalent occupation issued by a state, territory, protectorate or dependency of the United States, provided that such license, certification or certificate of registration was current and effective within one year of the date of the individual's application for licensure in New York, was granted in compliance with standards that are, in the judgment of the secretary, no less rigorous than those required for licensure in New York. If such standards for licensure, certification or registration are deemed by the secretary to be less rigorous than those required for licensure in New York, the secretary shall permit an applicant to submit evidence in a form acceptable to the Department of State to demonstrate the applicant's competency and trushworthiness. If such evidence is sufficient in the judgment of the secretary, the secretary shall grant a real estate broker or real estate salesperson license.

§442-h. Rules of the Secretary of State

1. The Secretary of State, and not the State real estate board established under §442-i of this article, shall adopt such rules and regulations as the Secretary of State may determine are necessary for the administration and enforcement of this section.

2. (a) If, after a public hearing and a reasonable investigation, the Secretary of State determines that the owners of residential real property within a defined geographic area are subject to intense and repeated solicitations by real estate brokers and salespersons or others to place their property for sale with such real estate brokers or salespersons, or otherwise to sell their property, and that such solicitations have caused owners to reasonably believe that property values may decrease because persons of different race, ethnic, social, or religious backgrounds are moving or are about to move into the neighborhood or geographic area, the Secretary of State may adopt a rule, to be known as a nonsolicitation order, directing all real estate brokers, salespersons and other persons regularly engaged in the trade or business of buying and selling real estate to refrain from soliciting residential real estate listings or otherwise soliciting the sale of residential real estate within the subject area. Each area subject to such an order shall be bounded or otherwise specifically defined in the order. The nonsolicitation order shall be subject to such terms and conditions as the Secretary of State may determine are, on balance, in the best interest of the public, including but not limited to the affected owners and licensees. A nonsolicitation order may prohibit any or all types of solicitation directed towards particular home-owners, including but not limited to letters, postcards, telephone calls, door-to-door calls and handbills. Every nonsolicitation order shall contain a provision setting forth the day, month and year that the order shall become effective, as well as the day, month and year that the order shall expire. A nonsolicitation order shall not be effective for more than five years. However, a nonsolicitation order and the boundaries of the area where it applies may be re-adopted or amended from time to time in accordance with the procedures set forth herein.

(b) No real estate broker shall establish a new principal office or branch office within any geographic area which is the subject of a nonsolicitation order without prior approval from the Secretary of State. The Secretary of State may deny any application for the establishment or relocation of a principal office or branch office if approval of the application would cause the total number of principal and branch offices within the subject area to exceed the total number of principal and branch offices that were licensed within the area on the date the nonsolicitation order became effective.

3. (a) If the Secretary of State determines that some owners of residential real property within a defined geographic area are subject to intense and repeated solicitation by real estate brokers and salespersons to place their property for sale with such real estate brokers or salespersons, or are subject to intense and repeated solicitation by other persons regularly engaged in the trade or business of buying and selling real estate to sell their real estate, the Secretary of State may adopt a rule establishing a cease and desist zone, which zone shall be bounded or otherwise specifically defined in the rule. After the Secretary of State has established a cease and desist zone, the owners of residential real property located within the zone may file an owner's statement with the Secretary of State expressing their wish not to be solicited by real estate brokers, salespersons or other persons regularly engaged in the trade or business of buying and selling real estate. The form and

content of the statement shall be prescribed by the Secretary of State. After a cease and desist zone has been established by the Secretary of State, no real estate broker, salesperson or other person regularly engaged in the trade or business of buying and selling real estate shall solicit a listing from any owner who has filed a statement with the Secretary of State if such owner's name appears on the current cease and desist list prepared by the Secretary of State.

(b) The prohibition on solicitation shall apply to direct forms of solicitation such as the use of the telephone, the mail, personal contact and other forms of direct solicitation as may be specified by the Secretary of State. Secretary of State shall compile a cease and desist list for each zone established pursuant to paragraph (a) of this subdivision. In addition to such other information as the Secretary of State may deem appropriate, each cease and desist list shall contain the name of each owner who has filed an owner's statement with the Secretary, as well as the address of the property within the zone to which the owner's statement applies. The Secretary of State shall send to each owner who has filed an owner's statement a written acknowledgement of the Secretary of State's receipt thereof and a pamphlet explaining to the owner his or her rights in connection therewith and the procedures and time limits applicable to the filing of complaints for violations. The Secretary of State shall allow an owner who files, or on behalf of whom is filed, a complaint or other report of a violation of a cease and desist rule 90 days in which to perfect a complaint by submitting such other or further information or documents as the Secretary of State may require. The Secretary of State shall print a list for each zone. Each list shall be revised and reprinted at least annually on or before December 31st and shall be made available to the public and to real estate brokers at a reasonable price to be set by the Secretary of State and approved by the Director of the Division of the Budget. Additions or deletions shall be made to each list only at the time the list is reprinted, and the Secretary of State shall not issue amendments or addenda to any printed list.

(c) No rule establishing a cease and desist zone shall be effective for longer than five years. However, the Secretary of State may re-adopt the rule to continue the cease and desist zone for additional periods not to exceed five years each. Whenever a rule establishing a cease and desist zone shall have expired or shall have been repealed, all owner's statements filed with the Secretary of State pursuant to that rule shall also expire. However, an owner may file a new statement with the Secretary of State if a new rule is adopted establishing a cease and desist zone containing the owner's property. Once the boundaries of a cease and desist zone have been established by rule of the Secretary of State, the boundaries may not be changed except by repeal of the existing rule and adoption of a new rule establishing the new boundaries.

§442-i. State real estate board

1. There is hereby established within the Department of State a State real estate board which shall consist of the Secretary of State, Superintendent of Financial Services, and 13 additional members. At least five of these members shall be "real estate brokers," each of whom, at the time of appointment, shall be licensed and qualified as a real estate broker under the laws of New York State and shall have been engaged in the real estate business in this State for a period of not less than 10 years prior to appointment. The remaining members shall be "public members" who shall not be real estate licensees.

2. The 13 members shall be appointed as follows: seven members shall be appointed by the Governor, three of whom shall be real estate brokers and four of whom shall be public members; two members shall be appointed by the temporary President of the Senate, one of whom shall be a real estate broker and one of whom shall be a public member; two members shall be appointed by the Speaker of the Assembly, one of whom shall be a real estate broker and one of whom shall be a public member; one member shall be appointed by the Minority Leader of the Senate, who shall be either a real estate broker or a public member; and one member shall be appointed by the Minority Leader of the Assembly, who shall be either a real estate broker or a public member.

3. Each appointed member shall serve for a term of two years; at any point during such term the appointed member may be removed by the person who appointed such member. In the event that any of said members shall die or resign during the term of office, the successor shall be appointed in the same way and with the same qualifications as set forth above. A member may be reappointed for successive terms but no member shall serve more than 10 years in his or her lifetime.

4. A majority of members currently serving on the board shall be required in order to pass any resolution or to approve any matter before the board. The Secretary of State shall be chairperson of the board. The vice-chairperson and a secretary shall be elected from among the members. A board member who fails to attend three consecutive meetings shall forfeit the seat unless the Secretary of State, upon written request from the member, finds that the member should have been excused from a meeting because of illness or death of a family member.

5. Each member of the board shall receive no compensation other than reimbursement for actual and necessary expenses.

6. The board shall meet no fewer than three times per year and at the call of the Secretary of State or a majority of the board. In addition to regularly scheduled meetings of the board, there shall be at least one public hearing each year in New York City, one public hearing each year in Buffalo, and one public hearing each year in Albany. At least 15 days prior to the holding of any of these public hearings pursuant to this subdivision, the board shall give public notice of the hearing in a newspaper of general circulation in each area where the public meeting is to be held. The purpose of these hearings shall be to solicit from members of the public, suggestions, comments, and observations about real estate practice in New York State.

§442-j. Effect of invalid provision

Should the courts of this State declare any provision of this article unconstitutional, or unauthorized, or in conflict with any other section or provision of this article, then such decision shall affect only the section or provision so declared to be unconstitutional or unauthorized and shall not affect any other section or part of this article.

§442-k. Powers and duties of the State real estate board

1. The State real estate board shall have the power to promulgate rules or regulations affecting brokers and salespersons in order to administer and effectuate the purposes of this article, except that matters pertaining to commingling money of a principal, rendering accounts for

a client, managing property for a client, broker's purchase of property listed with him or her, inducing breach of contract of sale or lease, and records of transactions to be maintained are reserved for the exclusive regulatory authority of the Secretary of State. The Secretary of State, and not the State real estate board, shall promulgate rules and regulations to administer or implement the provisions of §§441 and 442-h of this article. In addition, the Secretary of State shall have exclusive regulatory authority to promulgate rules regarding the duties and responsibilities of real estate brokers and salespersons with regard to the changing of clients' funds.

2. Authority to examine applicants. The board is empowered to prescribe the content for the courses of study for the examination and education of persons licensed under this article. The board shall advise the Secretary of State on policies governing the administration of the examinations.

3. Approval of schools. The board shall establish the rules and regulations governing the approval by the Secretary of State of schools to offer or conduct courses required either for licensure under this article or for the satisfaction of the continuing education requirements contained in paragraph (a) of subdivision three of §441 of this article.

4. Study of laws and regulations. The board shall study the operation of laws and regulations with respect to the rights, responsibilities and liabilities of real estate licensees arising out of the transfer of interests in real property and shall make recommendation on pending or proposed legislation affecting the same, with the exception of legislation affecting §442-h of this article.

5. Enforcement programs and activities. The board shall advise and assist the Secretary of State in carrying out the provisions and purposes of this article and make recommendations concerning the programs and activities of the department in connection with the enforcement of this article.

6. Administration and enforcement. The Department of State shall have the power and its duty shall be to administer and enforce the laws and regulations of the State relating to those activities involving real estate for which licensing is required under this article and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practice.

7. Reports to legislative committees. The board shall submit annually a report to the judiciary committee of the State Assembly and the judiciary committee of the State Senate, containing a description of the types of complaints received, status of cases, and the length of time from the initial complaint to any final disposition.

§442-l. After-the-fact referral fees

1. No real estate broker or salesperson, in any place in which this article is applicable, shall demand or receive a referral fee or compensation of any kind for (i) a referral from any person or other entity relative to finding a seller after a bona fide listing agreement has been signed, (ii) a referral from any person or other entity relative to finding a buyer after a bona fide offer to purchase is accepted, or (iii) a referral from any person or other entity relative to finding a property after a bona fide buyer's agency agreement has been signed, unless reasonable cause for payment of such compensation exists.

2. A violation of this section shall be a violation of this article and shall constitute a deceptive act or practice within the meaning of section three hundred forty-nine of the general business law.

§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.

j. "Designated sales agent" means a licensed real estate salesman 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 acknowledgment 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 tentant 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 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 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 (check relationship below)

(____) Seller's agent

(____) Broker's agent

(____) Dual agent

(_____) Buyer as a (check relationship below)

(____) Buyer's agent

(____) Broker's 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 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 agents fiduciary duties to the buyer.

BROKER'S A.GENTS

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)

(____) Landlord's agent

(____) Broker's agent

(____) Dual agent

(_____) Tenant as a (check relationship below)

(____) Tenant's agent

(____) Broker's 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 seller 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 or a seller in accordance with terms agreed to by the licensee and buyer or seller 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 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.

§443-a. Disclosure obligations

1. Notwithstanding any other provision of law, it is not a material defect or fact relating to property offered for sale or lease, including residential property regardless of the number of units contained therein, that:

(a) an owner or occupant of the property is, or was at any time suspected to be, infected with human immunodeficiency virus or diagnosed with acquired immune deficiency syndrome or any other disease which has been determined by medical evidence to be highly unlikely to be transmitted through occupancy of a dwelling place; or

(b) the property is, or is suspected to have been, the site of a homicide, suicide or other death by accidental or natural causes, or any crime punishable as a felony.

2. (a) No cause of action shall arise against an owner or occupant of real property, or the agent of such owner or occupant, or the agent of a seller or buyer of real property, for failure to disclose in any real estate transaction a fact or suspicion contained in subdivision one of this section.

(b) Failure to disclose a fact contained in subdivision one of this section to a transferee shall not be grounds for a disciplinary action against a real estate agent or broker licensed pursuant to this article.

(c) As used in this section, the terms “agent,” “buyer” and “seller” shall have the same meanings as such terms are defined in §443 of this article.

3. Notwithstanding the fact that this information is not a material defect or fact, if such information is important to the decision of the buyer to purchase or lease the property, the buyer may, when negotiating or making a bona fide offer, submit a written inquiry for such information. The buyer or the agent of the buyer shall provide the written request to the seller’s agent or to the seller if there is no seller’s agent. The seller may choose whether or not to respond to the inquiry. The seller’s agent, with the consent of the seller and subject to applicable laws regarding privacy, shall report any response and information to the buyer’s agent or to the buyer if there is no buyer’s agent. If there is no seller’s agent, the seller shall inform the buyer’s agent, or the buyer if there is no buyer’s agent, whether or not the seller chooses to provide a response.

4. This section shall preempt any local law inconsistent with the provisions of this section.

RELATED STATUTES AND LAWS

ARTICLE 8
CONVEYANCES & MORTGAGES

§242. Disclosure prior to the sale of real property

l. (a) Any person, firm, company, partnership or corporation offering to sell real property to which no utility electric service is provided shall provide written notice to the prospective purchaser or to the prospective purchaser’s agent, clearly indicating this fact. Such notice shall be provided prior to accepting a purchase offer.

(b) Any prospective or actual purchaser who has suffered a loss due to a violation of this section is entitled to recover any actual damages incurred from the person offering to sell said real property.

(c) The provisions of this subdivision shall not apply in instances where the real property being sold lies within the applicable free footage allowance or service lateral specified by the Public Service Commission in rule, regulation or public utility tariff.

2. Disclosure prior to the sale of real property to which utility surcharge payments attach.

(a) Any person, firm, company, partnership or corporation offering to sell real property against which an electric or gas utility surcharge is assessed for the purpose of defraying the costs associated with an electric or gas line extension, or for the purpose of defraying the costs associated with related facilities, shall provide written notice to the prospective purchaser or the prospective purchaser’s agent, stating as follows: “This property is subject to an electric and/or gas utility surcharge”. In addition, such notice shall also state, the type and purpose of the surcharge, the amount of the surcharge and whether such surcharge is payable on a monthly, yearly or other basis. Such notice shall be provided by the seller prior to accepting a purchase offer.

(b) Any prospective or actual purchaser who has suffered a loss due to a violation of this subdivision is entitled to recover any actual damages incurred from the person offering to sell or selling said real property.

3. Any person, firm, company, partnership or corporation offering to sell real property on which uncapped natural gas wells are situated, and of which such person, firm, company, partnership or corporation has actual knowledge, shall inform any purchaser of the existence of these wells prior to entering into a contract for the sale/purchase of such property.

ARTICLE 9
RECORDING INSTRUMENTS AFFECTING REAL PROPERTY

§291-i. Validity of electronic recording.

1. Notwithstanding any law to the contrary,

(a) where a law, rule or regulation requires, as a condition for recording, that an instrument affecting real property be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by a digitized paper document or an electronic record of such instrument;

(b) where a law, rule or regulation requires, as a condition for recording, that an instrument affecting real property be signed, the requirement is satisfied, where the instrument exists as a digitized paper document, if the digitized image of a wet signature of the person executing such instrument appears on such digitized paper document or, where the instrument exists as an electronic record, if the instrument is signed by use of an electronic signature;

(c) where a law, rule or regulation requires, as a condition of recording, that an instrument affecting real property or a signature associated with such an instrument be notarized, acknowledged, verified, witnessed or made under oath, the signature requirement is satisfied if:

(i) the digitized image of a wet signature of the person authorized to perform that act and any stamp, impression or seal required by law to be included, appears on a digitized paper document of such instrument; or

(ii) the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with an electronic record of such instrument, provided, however that no physical or electronic image of a stamp, impression or seal shall be required to accompany such electronic signature.

(d) where a law, rule or regulation requires, as a condition of recording an instrument affecting real property, that any accompanying document be filed therewith, the requirement is satisfied if, in the case of recording by electronic means, a digitized paper document or electronic record of any such accompanying document is presented to the recording officer at the same time as such instrument is recorded by electronic means; provided that each such document or record shall be presented to the recording officer as a separate digitized paper document or electronic record unto itself.

2. A digitized paper document or documents shall be created using a software application or other electronic process which stores an image of the original paper document or documents, and which does not permit additions, deletions or other changes to the digitized image, or if additions, deletions or changes are permitted, a media trail exists which creates an electronic record which makes it possible to identify these changes.

3. Nothing in this section or any other provision of law shall be construed to require the recording by electronic means of instruments affecting real property. The decision by each county clerk to participate in electronic recording is discretionary. Once a county clerk permits electronic recording, the county will accept such electronic recordings.

4. Where any recording officer permits instruments affecting real property and any accompanying documents to be presented for recording or filing as digitized paper documents or electronic records pursuant to this section, such recording by electronic means shall be in accordance with the rules and regulations established by the electronic facilitator pursuant to subdivision five of this section.

5. In order to ensure consistency in the standards and practices of, and the technology used by recording officers in the state, the electronic facilitator, as described in section three hundred three of the state technology law, shall, consistent with the provisions of article three of the state technology law, promulgate rules and regulations, and amendments thereto, as appropriate governing the use and acceptance of digitized paper documents, electronic records and electronic signatures under this article. Such authority shall address and be limited to standards requiring adequate information security protection to ensure that electronic records of instruments affecting real property documents are accurate, authentic, adequately preserved for long-term electronic storage and resistant to tampering. When promulgating rules and regulations, the electronic facilitator may take into consideration:

(a) the most recent standards promulgated by national standard-setting bodies such as, without limitation, the property records industry association;

(b) the views of interested persons and governmental officials and entities, including but not limited to recording officers and representatives of the state title, legal and banking industries; and

(c) the needs of counties of varying size, population, and resources.

6. Nothing contained in this section shall be construed to authorize a recording officer to furnish digitized paper documents of the reports required by section five hundred seventy-four of the real property tax law. Such reports shall be furnished as paper documents with the requisite notations thereon, except where the state board of real property services has agreed to accept data submissions in lieu thereof or has provided for the electronic transmission of such data pursuant to law.

§333-c. Lands in agricultural districts; disclosure

1. When any purchase and sales contract is presented for the sale, purchase, or exchange of real property located partially or wholly within an agricultural district established pursuant to the provisions of article 25-AA of the Agriculture and Markets Law, the prospective grantor shall deliver to the prospective grantee a notice which states the following:

"It is the policy of this State and this community to conserve, protect and encourage the development and improvement of agricultural land for the production of food, and other products, and also for its natural and ecological value. This notice is to inform prospective residents that the property they are about to acquire lies partially or wholly within an agricultural district, and that farming activities occur within the district. Such farming activities may include, but not be limited to, activities that cause noise, dust and odors."

2. Such disclosure notice shall be signed by the prospective grantor and grantee prior to the sale, purchase or exchange of such real property.

3. Failure of the seller to provide such information to the buyer shall not prevent the recording officer from filing such deed.

ARTICLE 14
PROPERTY CONDITION DISCLOSURE IN THE SALE OF RESIDENTIAL REAL PROPERTY

§460. Short title

This article shall be known and may be cited as the "Property Condition Disclosure Act".

§461. Definitions

As used in this article, the following terms shall have the following meanings:

1. "Agent" means a person who is licensed as a real estate broker or a real estate salesperson pursuant to section 440-a of this chapter and is acting in a fiduciary capacity.

2. "Binding contract of sale" means a real estate purchase contract or offer that would, upon signing by the seller and subject to satisfaction of any contingencies, require the buyer to accept a transfer of title.

3. "Knowledge" means only actual knowledge of a defect or condition on the part of the seller of residential real property.

4. "Real estate purchase contract" means any of the following:

(a) a contract which provides for the purchase and sale or exchange of residential real property;

(b) a lease with an option to purchase residential real property;

(c) a lease-with-obligation-to-purchase agreement for residential real property; or

(d) an installment land sale contract for residential real property.

5. "Residential real property" means real property improved by 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, but shall not refer to (a) unimproved real property upon which such dwellings are to be constructed, or (b) condominium units or cooperative apartments, or (c) property in a homeowners' association that is not owned in fee simple by the seller.

6. "Transfer of title" means delivery of a properly executed instrument conveying title to residential real property and shall include delivery of a real estate purchase contract that is a lease or installment land sale contract.

§462. Property condition disclosure statement

1. Except as is provided in section 463 of this article, every seller of residential real property pursuant to a real estate purchase contract shall complete and sign a property condition disclosure statement as prescribed by subdivision two of this section and cause it, or a copy thereof, to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale. A copy of the property condition disclosure statement containing the signatures of both seller and buyer shall be attached to the real estate purchase contract. Nothing contained in this article or this disclosure statement is intended to prevent the parties to a contract of sale from entering into agreements of any kind or nature with respect to the physical condition of the property to be sold, including, but not limited to, agreements for the sale of real property "as is".

2. The following shall be the disclosure form:

PROPERTY CONDITION DISCLOSURE STATEMENT

Name of Seller or Sellers:

Property Address:

The Property Condition Disclosure Act requires the seller of residential real property to cause this disclosure statement or a copy thereof to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale.

Purpose of Statement: This is a statement of certain conditions and information concerning the property known to the seller. This Disclosure Statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction. It is not a substitute for any inspections or tests and the buyer is encouraged to obtain his or her own independent professional inspections and environmental tests and also is encouraged to check public records pertaining to the property.

A knowingly false or incomplete statement by the seller on this form may subject the seller to claims by the buyer prior to or after the transfer of title. In the event a seller fails to perform the duty prescribed in this article to deliver a Disclosure Statement prior to the signing by the buyer of a binding contract of sale, the buyer shall receive upon the transfer of title a credit of $500 against the agreed upon purchase price of the residential real property.

"Residential real property" means real property improved by 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, but shall not refer to (a) unimproved real property upon which such dwellings are to be constructed or (b) condominium units or cooperative apartments or (c) property on a homeowners' association that is not owned in fee simple by the seller.

Instructions to the Seller:

a. Answer all questions based upon your actual knowledge.

b. Attach additional pages with your signature if additional space is required.

c. Complete this form yourself.

d. If some items do not apply to your property, check "NA" (Non-applicable). If you do not know the answer check "Unkn" (Unknown).

Seller's Statement: The seller makes the following representations to the buyer based upon the seller's actual knowledge at the time of signing this document. The seller authorizes his or her agent, if any, to provide a copy of this statement to a prospective buyer of the residential real property. The following are representations made by the seller and are not the representations of the seller's agent.

GENERAL INFORMATION

1. How long have you owned the property?
2. How long have you occupied the property?
3. What is the age of the structure or structures? Note to buyer – If the structure was built before 1978 you are encouraged to investigate for the presence of lead based paint.
4. Does anybody other than yourself have a lease, easement or any other right to use or occupy any part of your property other than those stated in documents available in the public record, such as rights to use a road or path or cut trees or crops? Yes No Unkn NA

5. Does anybody else claim to own any part of your property? Yes No Unkn NA (If Yes, explain below)
6. Has anyone denied you access to the property or made a formal legal claim challenging your title to the property? Yes No Unkn NA (If Yes, explain below)
7. Are there any features of the property shared in common with adjoining landowners or a homeowners association, such as walls, fences or driveways? Yes No Unkn NA (If Yes, describe below)
8. Are there any electric or gas utility surcharges for line extensions, special assessments or homeowner or other association fees that apply to the property? Yes No Unkn NA (If Yes, explain below)
9. Are there certificates of occupancy related to the property? Yes No Unkn NA (If No, explain below)

ENVIRONMENTAL

Note to Seller - In this section, you will be asked questions regarding petroleum products and hazardous or toxic substances that you know to have been spilled, leaked or otherwise been released on the property or from the property onto any other property. Petroleum products may include, but are not limited to, gasoline, diesel fuel, home heating fuel, and lubricants. Hazardous or toxic substances are products that could pose short or long-term danger to personal health or the environment if they are not properly disposed of, applied or stored. These include, but are not limited to, fertilizers, pesticides and insecticides, paint including paint thinner, varnish remover and wood preservatives, treated wood, construction materials such as asphalt and roofing materials, antifreeze and other automotive products, batteries, cleaning solvents including septic tank cleaners, household cleaners and pool chemicals and products containing mercury and lead.

Note to Buyer - If contamination of this property from petroleum products and/or hazardous or toxic substances is a concern to you, you are urged to consider soil and groundwater testing of this property.

10. Is any or all of the property located in a designated floodplain? Yes No Unkn NA (If Yes, explain below)
11. Is any or all of the property located in a designated wetland? Yes No Unkn NA (If Yes, explain below)
12. Is the property located in an agricultural district? Yes No Unkn NA (If Yes, explain below)
13. Was the property ever the site of a landfill? Yes No Unkn NA (If Yes, explain below)
14. Are there or have there ever been fuel storage tanks above or below the ground on the property? Yes No Unkn NA
    - If Yes, are they currently in use? Yes No Unkn NA
    - Location(s)
    - Are they leaking or have they ever leaked? Yes No Unkn NA (If Yes, explain below)
15. Is there asbestos in the structure? Yes No Unkn NA (If Yes, state location or locations below)
16. Is lead plumbing present? Yes No Unkn NA (If Yes, state location or locations below)
17. Has a radon test been done? Yes No Unkn NA (If Yes, attach a copy of the report)
18. Has motor fuel, motor oil, home heating fuel, lubricating oil or any other petroleum product, methane gas, or any hazardous or toxic substance spilled, leaked or otherwise been released on the property or from the property onto any other property? Yes No Unkn NA (If Yes, describe below)
19. Has the property been tested for the presence of motor fuel, motor oil, home heating fuel, lubricating oil, or any other petroleum product, methane gas, or any hazardous or toxic substance? Yes No Unkn NA (If Yes, attach report(s))

STRUCTURAL

20. Is there any rot or water damage to the structure or structures? Yes No Unkn NA (If Yes, explain below)
21. Is there any fire or smoke damage to the structure or structures? Yes No Unkn NA (If Yes, explain below)
22. Is there any termite, insect, rodent or pest infestation or damage? Yes No Unkn NA (If Yes, explain below)
23. Has the property been tested for termite, insect, rodent or pest infestation or damage? Yes No Unkn NA (If Yes, please attach report(s))
24. What is the type of roof/roof covering (slate, asphalt, other)? Any known material defects? How old is the roof? Is there a transferable warrantee on the roof in effect now? Yes No Unkn NA (If Yes, explain below)
25. Are there any known material defects in any of the following structural systems: footings, beams, girders, lintels, columns or partitions? Yes No Unkn NA (If Yes, explain below)

MECHANICAL SYSTEMS AND SERVICES

26. What is the water source? (Circle all that apply - well, private, municipal, other)? If municipal, is it metered? Yes No Unkn NA
27. Has the water quality and/or flow rate been tested? Yes No Unkn NA (If Yes, describe below)
28. What is the type of sewage system? (Circle all that apply - public sewer, private sewer, septic or cesspool)? If septic or cesspool, age? _____ Date last pumped? _____ Frequency of pumping? _____ Any known material defects? Yes No Unkn NA (If Yes, explain below)
29. Who is your electric service provider? _____ What is the amperage? _____ Does it have circuit breakers or fuses? _____ Private or public poles? _____ Any known material defects? Yes No Unkn NA (If Yes, explain below)
30. Are there any flooding, drainage or grading problems that resulted in standing water on any portion of the property? Yes No Unkn NA (If Yes, state locations and explain below)
31. Does the basement have seepage that results in standing water? Yes No Unkn NA (If Yes, explain below).

Are there any known material defects in any of the following (If Yes, explain below. Use additional sheets if necessary):

32. Plumbing system? Yes No Unkn NA
33. Security system? Yes No Unkn NA
34. Carbon monoxide detector? Yes No Unkn NA
35. Smoke detector? Yes No Unkn NA
36. Fire sprinkler system? Yes No Unkn NA
37. Sump pump? Yes No Unkn NA
38. Foundation/slab? Yes No Unkn NA
39. Interior walls/ceilings? Yes No Unkn NA
40. Exterior walls or siding? Yes No Unkn NA
41. Floors? Yes No Unkn NA

42. Chimney/fireplace or stove? Yes No Unkn NA

43. Patio/deck? Yes No Unkn NA

44. Driveway? Yes No Unkn NA

45. Air conditioner? Yes No Unkn NA

46. Heating system? Yes No Unkn NA

47. Hot water heater? Yes No Unkn NA

48. The property is located in the following school district Unkn

Note: Buyer is encouraged to check public records concerning the property (e.g. tax records and wetland and floodplain maps).

The seller should use this area to further explain any item above. If necessary, attach additional pages and indicate here the number of additional pages attached.

_____

_____

_____

_____

Seller's Certification: Seller certifies that the information in this Property Condition Disclosure Statement is true and complete to the seller's actual knowledge as of the date signed by the seller. If a seller of residential real property acquires knowledge which renders materially inaccurate a Property Condition Disclosure Statement provided previously, the seller shall deliver a revised Property Condition Disclosure Statement to the buyer as soon as practicable. In no event, however, shall a seller be required to provide a revised Property Condition Disclosure Statement after the transfer of title from the seller to the buyer or occupancy by the buyer, whichever is earlier.

Seller's Signature _____ Date _____

Seller's Signature _____ Date _____

Buyer's Acknowledgment: Buyer acknowledges receipt of a copy of this statement and buyer understands that this information is a statement of certain conditions and information concerning the property known to the seller. It is not a warranty of any kind by the seller or seller's agent and is not a substitute for any home, pest, radon or other inspections or testing of the property or inspection of the public records.

Buyer's Signature _____ Date _____

Buyer's Signature _____ Date _____

3. Nothing in this article shall require a seller to undertake or provide for any investigation or inspection of his or her residential real property or to check any public records.

§463. Exemptions

A property condition disclosure statement shall not be required in connection with any of the following transfers of residential real property:

1. A transfer pursuant to a court order, including, but not limited to, a transfer order by a probate court during the administration of a decedent's estate, a transfer pursuant to a writ of execution, a transfer by a trustee in bankruptcy or debtor-in-possession, a transfer as a result of the exercise of the power of eminent domain, and a transfer that results from a decree for specific performance of a contract or other agreement between two or more persons;

2. A transfer to mortgagee or an affiliate or agent thereof by a mortgagor by deed in lieu of foreclosure or in satisfaction of the mortgage debt;

3. A transfer to a beneficiary of a deed of trust;

4. A transfer pursuant to a foreclosure sale that follows a default in the satisfaction of an obligation that is secured by a mortgage;

5. A transfer by a sale under a power of sale that follows a default in the satisfaction of an obligation that is secured by a mortgage;

6. A transfer by a mortgagee, or a beneficiary under a mortgage, or an affiliate or agent thereof, who has acquired the residential real property at a sale under a mortgage or who has acquired the residential real property by a deed in lieu of foreclosure;

7. A transfer by a fiduciary in the course of the administration of a descendent's estate, a guardianship, a conservatorship, or a trust;

8. A transfer from one co-owner to one or more other co-owners;

9. A transfer made to the transferor's spouse or to one or more persons in the lineal consanguinity of one or more of the transferors;

10. A transfer between spouses or former spouses as a result of a decree of divorce, dissolution of marriage, annulment, or legal separation or as a result of property settlement, agreement incidental to a decree of divorce, dissolution of marriage, annulment or legal separation;

11. A transfer to or from the state, a political subdivision of the state, or another governmental entity;

12. A transfer that involves newly constructed residential real property that previously had not been inhabited;

13. A transfer by a sheriff; or

14. A transfer pursuant to a partition action.

§464. Revision

If a seller of residential real property acquires knowledge which renders materially inaccurate a property condition disclosure statement provided previously, the seller shall deliver a revised property condition disclosure statement to the buyer as soon as practicable. In no event, however, shall a seller be required to provide a revised property condition disclosure statement after the transfer of title from the seller to the buyer or occupancy by the buyer, whichever is earlier.

§465. Remedy

1. In the event a seller fails to perform the duty prescribed in this article to deliver a disclosure statement prior to the signing by the buyer of a binding contract of sale, the buyer shall receive upon the transfer of title a credit of $500 against the agreed upon purchase price of the residential real property.

2. Any seller who provides a property condition disclosure statement or provides or fails to provide a revised property condition disclosure statement shall be liable only for a willful failure to perform the requirements of this article. For such a willful failure, the seller shall be liable for the actual damages suffered by the buyer in addition to any other existing equitable or statutory remedy.

§466. Duty of an Agent

An agent representing a seller of residential real property as a listing broker shall have the duty to timely inform each seller represented by that agent of the seller's obligations under this article. An agent representing a buyer of residential real property, or, if the buyer is not represented by an agent, the agent representing a seller of residential real property and dealing with a prospective buyer, shall have the duty to timely (in any event, before the buyer signs a binding contract of

sale) inform such buyer of the buyer's rights and obligations under this article. If an agent performs the duties and obligations imposed upon him or her pursuant to this section, the agent shall have no further duties under this article and shall not be liable to any party for a violation of this article.

§467. Liability

Nothing contained in this article shall be construed as limiting any existing legal cause of action or remedy at law, in statute or in equity.

Article 15
Human Rights Law

§296 Unlawful discriminatory practices

5. (a) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof:

(1) To refuse to sell, rent, lease or otherwise to deny to or withhold from any person or group of persons such a housing accommodation because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available.

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or in the furnishing of facilities or services in connection therewith.

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such housing accommodation or to make any record or inquiry in connection with the prospective purchase, rental or lease of such a housing accommodation which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status, or any intent to make any such limitation, specification or discrimination.

The provisions of this paragraph (a) shall not apply (1) to the rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner resides in one of such housing accommodations, (2) to the restriction of the rental of all rooms in a housing accommodation to individuals of the same sex or (3) to the rental of a room or rooms in a housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner resides in such housing accommodation or (4) solely with respect to age and familial status to the restriction of the sale, rental or lease of housing accommodations exclusively to persons sixty-two years of age or older and the spouse of any such person, or for housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(b) It shall be an unlawful discriminatory practice for the owner, lessee, sub-lessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent or lease, land or commercial space:

(1) To refuse to sell, rent, lease or otherwise deny to or withhold from any person or group of persons land or commercial space because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation or land is not available for inspection, sale, rental or lease when in fact it is so available;

(2) To discriminate against any person because of race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space; or in the furnishing of facilities or services in connection therewith;

(3) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(4) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of land to be used for the construction, or location of housing accommodations exclusively for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807(b) (2) (c) (42 U.S.C. 3607(b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(c) It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space to any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons, or to represent that any housing accommodation, land or commercial space is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or any facilities of any housing accommodation, land or commercial space from any person or group of persons because of the race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status of such person or persons.

(2) To print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space which

expresses, directly or indirectly, any limitation, specification, or discrimination as to race, creed, color, national origin, sexual orientation, military status, sex, age, disability, marital status, or familial status; or any intent to make any such limitation, specification or discrimination.

(3) With respect to age and familial status, the provisions of this paragraph shall not apply to the restriction of the sale, rental or lease of any land or commercial space exclusively to persons fifty-five years of age or older and the spouse of any such person, or to the restriction of the sale, rental or lease of any housing accommodation or land to be used for the construction or location of housing accommodations for persons sixty-two years of age or older, or intended and operated for occupancy by at least one person fifty-five years of age or older per unit. In determining whether housing is intended and operated for occupancy by persons fifty-five years of age or older, Sec. 807 (b) (2) (c) (42 U.S.C. 3607 (b) (2) (c)) of the federal Fair Housing Act of 1988, as amended, shall apply.

(d) It shall be an unlawful discriminatory practice for any real estate board, because of the race, creed, color, national origin, sexual orientation, military status, age, sex, disability, marital status, or familial status of any individual who is otherwise qualified for membership, to exclude or expel such individual from membership, or to discriminate against such individual in the terms, conditions and privileges of membership in such board.

(e) It shall be an unlawful discriminatory practice for the owner, proprietor or managing agent of, or other person having the right to provide care and services in, a private proprietary nursing home, convalescent home, or home for adults, or an intermediate care facility, as defined in section two of the social services law, heretofore constructed, or to be constructed, or any agent or employee thereof, to refuse to provide services and care in such home or facility to any individual or to discriminate against any individual in the terms, conditions, and privileges of such services and care solely because such individual is a blind person. For purposes of this paragraph, a "blind person" shall mean a person who is registered as a blind person with the commission for the visually handicapped and who meets the definition of a "blind person" pursuant to section three of chapter four hundred fifteen of the laws of nineteen hundred thirteen1 entitled "An act to establish a state commission for improving the condition of the blind of the state of New York, and making an appropriation therefor".

(f) The provisions of this subdivision, as they relate to age, shall not apply to persons under the age of eighteen years.

(g) It shall be an unlawful discriminatory practice for any person offering or providing housing accommodations, land or commercial space as described in paragraphs (a), (b), and (c) of this subdivision to make or cause to be made any written or oral inquiry or record concerning membership of any person in the state organized militia in relation to the purchase, rental or lease of such housing accommodation, land, or commercial space, provided, however, that nothing in this subdivision shall prohibit a member of the state organized militia from voluntarily disclosing such membership.

UNITED STATES CODE

42 USCA §3604. It shall be unlawful . . .

To make, print, or publish, or cause to be made, printed, or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, sex, handicap, familial status, or national origin, or an intention to make any such preference, limitation, or discrimination.

RULES AND REGULATIONS TITLE 19 NYCRR

SUBCHAPTER D
Real Estate Brokers and Salespersons

Part

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PART 175 REGULATIONS AFFECTING BROKERS AND SALESPERSONS

Section

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§175.1 Commingling money of principal

A real estate broker shall not commingle the money or other property of his principal with his own and shall at all times maintain a separate, special bank account to be used exclusively for the deposit of said monies and which deposit shall be made as promptly as practicable. Said monies shall not be placed in any depository, fund or investment other than a federally insured bank account. Accrued interest, if any, shall not be retained by, or for the benefit of, the broker except to the

extent that it is applied to, and deducted from, earned commission, with the consent of all parties.

§175.2 Rendering account for client

A real estate broker shall, within a reasonable time, render an account to this client and remit to him, any monies collected for his client, and unexpended for his account.

§175.3 Managing property for client

(a) When acting as an agent in the management of property a real estate broker shall not accept any commission, rebate or profit on expenditures made for his client without his full knowledge and consent.

(b) A person, firm or corporation licensed or acting as a real estate broker, and having on deposit or otherwise in custody or control any money furnished as security by a tenant of real property, shall treat, handle and dispose of such money (including any required interest thereon) in compliance with the requirements of §7-103 of the General Obligations Law. Failure to so comply, including failure to pay, apply or credit any required interest, shall constitute grounds for disciplinary or other appropriate action by the Secretary of State.

§175.4 Broker's purchase of property listed with him

A real estate broker shall not directly or indirectly buy for himself property listed with him, nor shall he acquire any interest therein without first making his true position clearly known to the listing owner.

§175.5 Disclosure of interest to client

Before a real estate broker buys property for a client in the ownership of which the broker has an interest, he shall disclose his interest to all parties to the transaction.

§175.6 Broker's sale of property in which he owns an interest

Before a real estate broker sells property in which he owns an interest, he shall make such interest known to the purchaser.

§175.7 Compensation

A real estate broker shall make it clear for which party he is acting and he shall not receive compensation from more than one party except with the full knowledge and consent of all parties.

§175.8 Negotiating with party to exclusive listing contract

No real estate broker shall negotiate the sale, exchange or lease of any property directly with an owner or lessor if he knows that such owner, or lessor, has an existing written contract granting exclusive authority in connection with such property with another broker.

§175.9 Inducing breach of contract of sale or lease

No real estate broker shall induce any party to a contract of sale or lease to break such contract for the purpose of substituting in lieu thereof a new contract with another principal.

§175.10 Broker's offering property for sale must be authorized

A real estate broker shall never offer a property for sale or lease without the authorization of the owner.

§175.11 Sign on property

No sign shall ever be placed on any property by a real estate broker without the consent of the owner.

§175.12 Delivering copy of instrument

A real estate broker shall immediately deliver a copy of any instrument to any party or parties executing the same, where such instrument has been prepared by such broker or under his supervision and where such instrument relates to the employment of the broker or to any matters pertaining to the consummation of a lease, or the purchase, sale or exchange of real property or any other type of real estate transaction in which he may participate as a broker.

§175.13 Accepting services of another broker's salesperson or employee

A real estate broker shall not accept the services of any salesperson or employee in the organization of another real estate broker without the knowledge of the broker and no real estate broker should give or permit to be given or directly offer to give anything of value for the purpose of influencing or rewarding the actions of any salesperson or employee of another real estate broker in relation to the business of such broker or the client of such broker without the knowledge of such broker.

§175.14 Termination of salesperson's association with broker

A real estate salesperson shall, upon termination of his association with a real estate broker, forthwith turn over to such broker any and all listing information obtained during his association whether such information was originally given to him by the broker or copied from the records of such broker or acquired by the salesperson during his association.

§175.15 Automatic continuation of exclusive listing contract

No real estate broker shall be a party to an exclusive listing contract which shall contain an automatic continuation of the period of such listing beyond the fixed termination date set forth therein.

§175.16 [*Reserved*]

§175.17 Prohibitions in relation to solicitation and unlawful discriminatory practice

(a)(1) No broker or salesperson shall induce or attempt to induce an owner to sell or lease any residential property or to list same for sale or lease by making any representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, national origin, age, sex, sexual orientation, disability, gender identity, military status, familial status or any other protected category under any federal, state or local law applicable to the activities of real estate licensees in New York State.

(2)(i) No licensed real estate broker or salesperson shall solicit the sale, lease or the listing for sale or lease of residential property after such licensee has received written notice from an owner thereof that such owner or owners do not desire to sell, lease or list such property.

(ii) Notice provided under the provisions of this subdivision to a real estate broker shall constitute notice to all associate brokers and salespersons who are employed by the real estate broker.

(3)(i) No licensed real estate broker or salesperson shall solicit the sale, lease or the listing for sale or lease of residential property from owner of residential property located in a designated cease-and-desist zone if such owner has filed a cease-and-desist notice with the Department of State indicating that such owner or owners do not desire to sell, lease or list their residential property and do not desire to be solicited to sell, lease or list their residential property.

(ii) The following geographic areas are designated as cease-and-desist zones, and, unless sooner redesignated, the designation for the following cease-and-desist zones shall expire on the following dates:

Zone	Expiration Date
County of Bronx	August 1, 2014

Within the County of Bronx as follows:

All that area of land in the County of Bronx, City of New York, otherwise known as Community Districts 10, 11 and 12 and bounded and described as follows: Beginning at a point at the intersection of Bronx County and Westchester County boundary and Long Island Sound; thence southerly along Long Island Sound while including City Island to East River; thence westerly and along East River to Westchester Creek; thence northerly, northwesterly and northeasterly along Westchester Creek to East Tremont Ave; thence southwesterly, northwesterly and westerly along East Tremont Ave to Bronx River Parkway; thence northerly and northeasterly along Bronx River Parkway to East 233rd Street; thence westerly along East 233rd Street to Van Cortlandt Park East; thence northerly along Van Cortlandt Park East to the boundary of Westchester County and Bronx County; thence easterly along the boundary of Westchester County and Bronx County to Long Island Sound and the point of beginning.

Zone	Expiration Date
County of Queens	August 1, 2014

Within the County of Queens as follows:

All that area of land in the County of Queens, City of New York, otherwise known as Bayside, Bellerose, Queens Village, Rockaways, South Ozone Park, Woodhaven and Whitestone bounded and described as follows:

Bayside: Located in northern Queens. Francis Lewis Boulevard to the west, 233rd Street to the east, Grand Central Parkway to the South and Cross Island Parkway to the north and bounded by the geographical boundaries of the following zip codes: 11361, 11359, 11360, and 11364.

Bellerose: Little Neck Parkway to the east, Grand Central Parkway to the west, the Credmoor State Hospital grounds to the north and Braddock and Jamaica Avenues to the south and bounded by the geographical boundary of the zip code 11426.

Queens Village: Nassau County and Belmont Park to the east, Cambria Heights and St. Albans to the south. Hollis to the West, and Bellerose and Holliswood to the north and bounded by the geographical boundaries of the following zip codes: 11427, 11428, and 11429.

Rockaways: Located in southern Queens. 11 miles long peninsula with Jamaica Bay to the north, the Atlantic Ocean to the south and Nassau County to the east and bounded by the geographical boundaries of the following zip codes: 11690, 11691, 11692, 11693, 11694, 11695 and 11697.

South Ozone Park: Van Wyck Expressway to the east, Aqueduct Race Track to the west, Liberty Ave to the north and Conduit Avenue and Belt Parkway to the south and bounded by the geographical boundaries of the zip code 11420.

Woodhaven: Forest Park and Park Lane South to the north, Richmond Hill to the east, Ozone Park and Atlantic Avenue to the south and borough of Brooklyn to the west and bounded by the geographical boundaries of the zip code 11421.

Whitestone: Located in northern Queens between the Est River to the north and 25th Avenue to the south, Whitestone Bridge to the west and the Throgs Neck Bridge to the east and bounded by the geographical boundaries of the zip code 11357.

Cease and Desist Zone

(Mill Basin/Brooklyn)

Zone	Expiration Date
County of Kings (Brooklyn)	November 30, 2012

Within the County of Kings as follows:

All that area of land in the County of Kings, City of New York, otherwise known as the communities of Mill Basin, Mill Island, Bergen Beach, Futurama, Marine Park and Madison Marine, bounded and described as follows: Beginning at a point at the intersection of Flatlands Avenue and the northern prolongation of Paerdegat Basin, thence southwesterly along Flatlands Avenue to Avenue N; thence westerly along Avenue N to Nostrand Avenue; thence southerly along Nostrand Avenue to Kings Highway; thence southwesterly along Kings Highway to Ocean Avenue; thence southerly along Ocean Avenue to Shore Parkway; thence northeasterly, southeasterly, northerly, northeasterly and northerly along Shore Parkway to Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin; thence northwesterly along Paerdegat Basin and the northern prolongation of Paerdegat Basin to Flatlands Avenue and the point of beginning.

(iii) The names and addresses of owners who have filed a cease-and-desist notice with the Department of State shall be compiled according to the street address for each cease-and-desist zone. Following the first compilation of a list, the list shall be revised and updated annually on or before December 31st. Individual lists shall be identified by geographic area and year.

(iv) A copy of each cease-and-desist list shall be available for inspection at the following offices of the Department of State:

Department of State
Division of Licensing Services
80 South Swan Street, 10th Floor
Albany, New York 12201-2001

Department of State
Division of Licensing Services
State Office Building Annex
164 Hawley Street
Binghamton, New York 13901-4053

Department of State
Division of Licensing Services

65 Court Street
Buffalo, New York 14202-3471

Department of State
Division of Licensing Services
Hughes State Office Building
Syracuse, New York 13202-1428

Department of State
Division of Licensing Services
State Office Building
Veterans Memorial Highway
Hauppauge, New York 11788-5501

**Department of State
Division of Licensing Services
114 Old Country Road
Mineola, New York 11501-4459
**(This office has been closed)

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038

(v) The cost of each list complied pursuant to this subdivision shall be $10 and shall be available upon written request to the following address:

Department of State
Division of Licensing Services
123 William Street
New York, New York 10038

(vi) The original cease-and-desist notice shall be filed with the Department of State's Division of Licensing Services at 123 William Street, 19th Floor, New York, New York 10038, and shall be available for public inspection and copying upon written request and appointment.

(vii) For the purposes of the Real Property Law, §411-c, it shall not be a demonstration of untrustworthiness or incompetence for a licensee to solicit an owner who had filed a cease-and-desist notice with the Department of State if the owner's name and address do not appear on the current cease-and-desist list compiled by the Department of State pursuant to subparagraph (iii) of this paragraph.

(4)

(i) For the purposes of this subdivision, *solicitation* shall mean an attempt to purchase or rent or an attempt to obtain a listing of property for sale, for rent or for purchase. Solicitation shall include but not be limited to use of the telephone, mails, delivery services, personal contact or otherwise causing any solicitation, oral or written, direct or by agent:

(a) to be delivered or presented to the owner or anyone else at the owner's home address;

(b) to be left for the owner or anyone else at the owner's home address; or

(c) to be placed on any vehicle, structure or object located on the owner's premises.

(ii) Solicitation shall not include classified advertising in regularly printed periodicals that are not primarily real estate related; advertisements placed in public view if they are not otherwise in violation of this subdivision; or radio and television advertisements.

(5) For the purposes of this subdivision, *residential property* shall mean one-, two- or three-family houses, including a cooperative apartment or condominium.

(b) No real estate broker or salesperson shall engage in an unlawful discriminatory practice, as proscribed by any federal, state or local law applicable to the activities of real estate licensees in New York State. A finding by any federal, state or local agency or court of competent jurisdiction that a real estate broker or salesperson has engaged in unlawful discriminatory practice in the performance of licensed real estate activities shall be presumptive evidence of untrustworthiness and will subject such licensee to discipline, including a proceeding for revocation. Nothing herein shall limit or restrict the Department from otherwise exercising its authority pursuant to section 441-c of the Real Property Law.

§175.18 Use of trade or corporate name

No licensed real estate broker or applicant applying for a real estate broker's license, may use a trade or corporate name which, in the opinion of the Department of State, is so similar to the trade name or corporate name of any licensed real estate broker that confusion to the public will result therefrom.

§175.19 Net listing agreements

(a) The term net listing as used herein shall mean an agency or other agreement whereby a prospective seller of real property or an interest therein, lists such property or interest for sale with a licensed real estate broker authorizing the sale thereof at a specified net amount to be paid to the seller and authorizing the broker to retain as commission, compensation, or otherwise, the difference between the price at which the property or interest is sold and the specified net amount to be received by the seller.

(b) No real estate broker shall make or enter into a "net listing" contract for the sale of real property or any interest therein.

§175.20 Branch offices

(a) Every branch office shall be owned, maintained and operated only by the licensed broker to whom the license for such office is issued. A branch office shall not be conducted, maintained and operated under an arrangement whereby a licensed salesperson or employee of the broker shall pay, or be responsible for, any expense or obligation created or incurred in its conduct, maintenance or operation, or under any other arrangement, the purpose, intent or effect of which shall permit a licensed salesperson or employee to carry on the business of real estate broker for his own benefit, directly, or indirectly, in whole or in part.

(b) Every branch office shall be under the direct supervision of the broker to whom the license is issued, or a representative broker of a corporation or partnership holding such license.

(c) Repealed.

(d) No broker shall relocate his principal office or any branch office without prior approval of the department.

§175.21 Supervision of salesperson by broker

(a) The supervision of a real estate salesperson by a licensed real estate broker, required by subdivision l(d) of §441 of the Real Property Law, shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the real estate broker with

respect to the general real estate brokerage business conducted by the broker, and all matters relating thereto.

(b) The broker and salesperson shall keep written records of all real estate listings obtained by the salesperson, and of all sales and other transactions effected by, and with the aid and assistance of, the salesperson, during the period of his association, which records shall be sufficient to clearly identify the transactions and shall indicate the dates thereof. Such records must be submitted by the salesperson to the Department of State with his application for a broker's license.

(c) Participation in the general real estate brokerage business as a licensed real estate salesperson shall consist of active service under the supervision of a licensed real estate broker for at least 35 hours per week for 50 weeks in each year required for qualification under the law.

§175.22 Ownership of voting stock by salespersons prohibited

No licensed real estate salesperson may own, either singly or jointly, directly or indirectly, any voting shares of stock in any licensed real estate brokerage corporation with which he is associated.

§175.23 Records of transactions to be maintained

(a) Each licensed broker shall keep and maintain for a period of three years, paper and/or electronic records of each transaction effected through his or her office concerning the sale of 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 a one-to-four-family dwelling, or a condominium or cooperative apartments but shall not refer to unimproved real property upon which such dwellings are to be constructed. Records to be kept and maintained shall contain:

(1) the names and addresses of the seller and the buyer,

(2) the broker prepared purchase contract or binder, or if the purchase contract is not prepared by the broker, then the purchase price and the amount of deposit (if collected by broker),

(3) the amount of commission paid to broker,

(4) the gross profit realized by the broker if purchased by him or her for resale,

(5) any document required under Article 12-A of the Real Property Law and

(6) the listing agreement or commission agreement or buyer-broker agreement.

(b) In some transactions, the broker may not be provided a copy of the documents required to be maintained by subdivision (a) of this section. In such instances, the broker will not be found to have violated the requirements of this section.

§175.24 Exclusive listings—residential property

(a) Residential real property as used in this section shall mean real property used or occupied, or intended to be used or occupied, wholly or partly, as a 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.

(b) In all commission agreements obtained by a broker which provide for an exclusive listing of residential property, the broker shall have attached to the listing or printed on the listing and signed or initialed by the homeowner or the homeowner's agent the following explanation in type size of not less than six point:

"EXPLANATION:

An "exclusive right to sell" listing means that if you, the owner of the property, find a buyer for your house, or if another broker finds a buyer, you must pay the agreed commission to the present broker. An "exclusive agency" listing means that if you, the owner of the property find a buyer, you will not have to pay a commission to the broker. However, if another broker finds a buyer, you will owe a commission to both the selling broker and your present broker."

(c) If an exclusive listing of residential property is obtained by a broker who is a member of a multiple listing service, the listing agreement shall provide that the homeowner shall have the option of having all negotiated offers to purchase the listed residential property submitted either through the listing broker or submitted through the selling broker.

§175.25 Advertising

(a) Definitions

1. "Advertising" and "advertisement" mean promotion and solicitation related to licensed real estate activity, including but not limited to, advertising via mail, telephone, websites, e-mail, electronic bulletin boards, business cards, signs, billboards, and flyers. "Advertising" and "advertisement" shall not include commentary made by a duly licensed real estate salesperson, real estate associate broker or real estate broker that is not related to promoting licensed real estate activity.

2. "Team" means two or more persons, one of whom must be an associate real estate broker or real estate salesperson, associated with the same real estate brokerage who hold themselves out or operate as a team.

3. "Real estate brokerage" means a real estate company represented by a real estate broker.

4. "Logo" means a graphic mark used to identify a real estate broker, associate broker, salesperson or team, but not a photograph of a real estate broker, associate broker, salesperson or team contained in an advertisement.

5. "Property" means real estate property or shares of stock in a cooperative corporation.

(b) Placement of advertisements

1. Only a real estate broker is permitted to place or cause to be published advertisements related to the sale or lease of property. Advertisements placed or caused to be published by an associate real estate broker, a real estate salesperson or a team for the sale or lease of property listed with or represented by a real estate broker are not permitted except where the property is listed with or represented by the real estate broker with whom the associate real estate broker, real estate salesperson or team placing the ad is associated and said real estate broker approved placement of the advertisement.

2. Authorization

a. No property shall be advertised unless the real estate broker has obtained authorization for such advertisement from the owner of the property or as hereinafter provided.

b. Real estate brokers shall not advertise property that is subject to an exclusive listing held by another real estate without the permission of the listing broker.

c. Proprietary information. Photographs of property that are posted on a real estate broker's website shall not be used or reproduced without written permission from the copyright holder of such photographs.

(c) Content of advertisements

1. Name of real estate broker. Advertisements shall indicate that the advertiser is a real estate broker or provide the name of the real estate broker or real estate brokerage and either: (i) the full address of the real estate broker or real estate brokerage or, (ii) the telephone number of the real estate broker or brokerage.

2. Name of associated licensees. The advertisement may include the names of one or more associate real estate brokers or real estate salespersons associated with the real estate broker or brokerage placing the advertisement. Where an advertisement includes the name of an associate broker, real estate salesperson or a team, the name of the real estate broker and/or real estate brokerage must also be printed in the advertisement.

3. Nicknames. Real estate brokers, associate real estate brokers, and real estate salespersons shall advertise using the name under which said real estate broker, associate real estate broker or real estate salesperson is licensed with the Department of State. A nickname may be used in an advertisement provided that the full-licensed name is listed clearly and conspicuously.

4. License type. Except as provided in subsection (d) of this section, advertisements shall correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. Licensees may abbreviate the type of license held, provided that such abbreviation is not misleading. The use of the titles, "sales associate", "licensed sales agent" or simply "broker" is prohibited. Real estate brokers, associate real estate brokers or real estate salespersons who have additional titles or designations are permitted to advertise such titles of designations.

5. Contact information. An associate real estate broker, real estate salesperson or team may provide additional contact information, such as a post office box, in an advertisement.

6. Home offices. A residence may be used as an office provided that it is properly licensed by the Department of State.

7. Telephone numbers. Notwithstanding subdivision (c)(1) of this section, a real estate broker, associate broker, real estate salesperson or team may provide telephone numbers other than that of the brokerage in an advertisement, provided that the advertisement clearly identifies the type of such other telephone number as desk, home, cell phone, or otherwise.

8. Logos. A real estate team, associate real estate broker or real estate salesperson may use a logo different from that of the real estate broker or real estate brokerage with whom they are associated, provided that the name or logo of the real estate broker or real estate brokerage is also printed in the advertisement.

9. Property description. Advertisements shall include an honest and accurate description of the property to be sold or leased. All advertisements that state the advertised property is in the vicinity of a geographical area or territorial subdivision shall include as part of such advertisement the name of the geographical area or territorial subdivision in which such property is actually located. Use by real estate brokers, associate real estate brokers and real estate salespersons of a name to describe an area that would be misleading to the public is prohibited.

10. Guaranteed Profits. Advertisements shall not guarantee future profits from any real estate activity.

(d) Additional requirements and exceptions

1. Classified Advertisements. Classified and multi-property advertisements shall indicate that the advertiser is a real estate broker or brokerage; or provide the name of the real estate broker or real estate brokerage. Classified and multi-property advertisements may omit the license type or any associate real estate broker or real estate salesperson named in the advertisement.

2. Business Cards. Notwithstanding subdivision (c) of this section, business cards must contain the business address of the licensee and the name of the real estate broker or real estate brokerage with whom the associate real estate broker or real estate salesperson is associated. All business cards must also contain the office telephone number for the associate real estate broker, real estate salesperson or team.

3. Web-based advertising

a. Websites created and maintained by associate real estate brokers, real estate salespersons and teams are permitted, provided that said associate real estate brokers, real estate salespersons and teams are duly authorized by their supervising real estate broker to create and maintain such websites and such websites remain subject to the supervision of the real estate broker with whom the licensees are associated while the website is live.

b. Every page of such a website shall include the information required by these rules and regulations. In addition, a link to the broker or brokerage website with whom the associate broker, salesperson or team is associated is required on the homepage of the associate broker, salesperson or team website unless the broker or brokerage does not have a website.

4. E-mail. An initial e-mail from a real estate broker, associate real estate broker, real estate salesperson or team to a client or potential client shall provide the information required by these rules and regulations. Such information may be omitted from subsequent e-mail communications to the same recipient.

5. For-Sale Signs. Notwithstanding subdivision (c)(1) of this section, unless otherwise prohibited by local law, any property listed through a real estate broker must be advertised as such, and any signage placed upon such property soliciting the sale or lease of the property must identify the representative broker or brokerage.

6. Advertisements referencing property not listed with broker. Any advertisement that references or includes information about a property a that is not listed with the advertising broker or was not sold by the advertising broker shall prominently display the following disclaimer: "This advertisement does not suggest that the broker has a listing in this property or properties or that any property is currently available." Such advertisement: (i) shall not suggest, directly or indirectly, that the advertising broker was involved in the transaction and (ii) shall not refer to property currently listed with another broker absent consent provided pursuant to subdivision (b)(2)(b).

(e) Teams

1. Team name. Team names shall either: (i) include the full licensed name of the real estate brokers, associate brokers or real estate salespersons who are part of said team, or (ii) if the names are not included, the team name must be immediately followed by "at/of [full name of the broker/brokerage]." Team names shall use the term

"team." The use of any other terms besides "team," such as "associate," "realty" or "group" is prohibited. The use of the name of a non-licensed individual in a team name is prohibited. For twelve months after the adoption of this regulation, teams that have changed their name to comply with this provision shall be entitled to state in advertisements under their new name that they were 'formerly known as' their prior team name.

2. Unlicensed team members. If any unlicensed individuals are named in advertising for a team, the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.

§175.26 Posting of business signs

For purposes of compliance with subdivision 3 of §441-a of Article 12 of the Real Property Law, in an apartment building where the posting of signs is not permitted in the lobby pursuant to the rules and regulations of the building, said sign must be posted on the corridor wall next to the entrance door of the dwelling unit or on the entrance door of the dwelling unit or on the entrance door of the dwelling unit in which the business is conducted.

§175.27 Disclaimer

Nothing in this Part is intended to be, or should be construed as, an indication that a salesperson is either an independent contractor or employee of a broker.

PART 176
APPROVAL OF
REAL ESTATE COURSES

Section

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§176.1 Approved entities

Real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education; public and private vocational schools; real estate boards; and real estate-related professional societies and organizations. No real estate course of study seeking approval may be affiliated with or controlled by any real estate broker, licensed salesperson, licensed or certified real estate appraiser, firm, or company or franchise, or controlled by a subsidiary of any real estate broker, real estate appraiser or franchise.

§176.2 Request for approval of courses of study

Applications for approval to conduct courses of study to satisfy the requirements for licensed real estate salesperson and broker shall be made 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:

(a) name and business address of the proposed school which will present the course;

(b) if applicant is a partnership, the names and home addresses of all the partners of the entity;

(c) if applicant is a corporation, the names and home addresses of persons who own five percent or more of the stock of the entity;

(d) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;

(e) locations where classes will be conducted;

(f) title of each course to be conducted;

(g) final examination to be presented for each course, including the answer key;

(h) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each answer must be indicated with a footnote showing page number, subject matter, etc.;

(i) description of materials that will be distributed;

(j) the books that will be used for the outline and the final exams; and

(k) detailed outline for local concerns when applying for broker course approval.

§176.3 Subjects for study—real estate salespersons

(a) The following are the required subjects to be included in the course of study in real estate for licensure as a real estate salesperson, and the required number of hours to be devoted to each subject:

Salesperson's Course

Subject Matter	*Hours*
License Law and Regulations	3
Law of Agency	11
Legal Issues	10
The Contract of Sales and Leases	3
Real Estate Finance	5

Land Use Regulations	3
Construction and Environmental Issues	5
Valuation Process and Pricing Properties	3
Human Rights and Fair Housing	4
Real Estate Mathematics	1
Municipal Agencies	2
Property Insurance	2
Taxes and Assessments	3
Condominiums and Cooperatives	4
Commercial and Investment Properties	10
Income Tax in Real Estate Transactions	3
Mortgage Brokerages	1
Property Management	2
Instruction	75
Final Examination	3
Total	78

(b) All approved courses must use this course syllabus in conducting their programs.

§176.4 Subjects for study—real estate broker

The education qualifications for real estate broker's license requires the completion of:

(a) an approved real estate salesperson's course except that a salesperson who was licensed prior to November 1, 1979, may substitute 75 hours of approved continuing education in lieu of a salesperson's course; and

(b) an approved real estate broker's course.

Before enrolling a student into an approved broker's course, the education coordinator must be provided with evidence of a signed statement from the student indicating that he/she has successfully completed the salesperson's course. Proof of the student's completion of the prerequisite course must be kept on file by the education coordinator. The following are the required subjects to be included in the course of study in real estate for licensure as a real estate broker and the required number of hours to be devoted to each subject:

Broker's Course

Subject Matter	Hours
Broker's office—operation, management and supervision	10
Real estate agency disclosure (review)	4
General Business Law	5
Real estate finance II	5
Real estate investment	5
Real property management	5
Conveyance of real property and title closing and costs (review)	3
Construction and development	4
Taxes and assessments	2
Local concerns*	2

- Cease and desist regulations
- Nonsolicitation orders
- Illegal entities/conversions
- Rent regulations (rent control, rent stabilization)
- Farm land
- Forestry
- Sign ordinances
- Zoning
- Waterfront property
- Wetlands/restrictions
- Environment problems in an area

Instruction	45 Hours
Final examination	3 Hours
Total	48 Hours

* Program coordinators are not limited to these topics. They must, however, submit an outline and learning objectives for the two hours that will be presented to students.

All approved instructors must use this course syllabus in conducting their program.

§176.5 Computation of instruction time

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 50 minutes. For every 50 minutes of instruction there shall be an additional 10 minute break. The time of the breaks shall be left to the discretion of the individual education coordinator. Breaks shall not be considered optional, nor are they to be used to release the class earlier than scheduled.

§176.6 Attendance and examinations

(a) No licensed person shall receive credit for any course or course module presented in a class-room setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course or course module pursuant to sections 176.3 and 176.4 of this Title, and no licensed person shall be absent from the class room except for a reasonable and unavoidable cause.

(b) Students who fail to attend the required scheduled class hours may, at the discretion of the approved entity, make up the missed subject matter during subsequent classes presented by the approved entity.

(c) Final examinations may not be taken by any student who has not satisfied the attendance requirement.

(d) A make up examination may be presented to students at the discretion of the approved entity. Make up examinations must be submitted for approval to the department in accordance with guidelines noted in §176.2 (g) and (h) of this Part.

§176.7 [*Reserved*]

§176.8 Facilities

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course. No course shall be presented in any real estate broker's office or the office of any association of real estate brokers except as otherwise may be permitted under this Part.

§176.9 Examination requirement and record retention

(a) All organizations conducting approved courses of study shall retain the attendance records, the final examinations and a list of students who successfully complete each course for a period of three years after completion of each course. All documents shall at all times during such period be available for inspection by duly authorized representatives of the Department of State.

(b) All examinations required for course work shall be written and given within a reasonable time after the course work has been

conducted. The failure of the final exam shall constitute failure of the course.

§176.10 Change in approved course of study

There shall be no change or alteration in any approved course of study of any subject or in any instruction staff without prior written notice to and approval by the department.

§176.11 Faculty

(a) Each instructor, as certified by the Department of State, for an approved real estate course of study, shall submit a resume to the department and meet the following criteria, and shall achieve at least 100 points based on the following scale which includes real estate brokerage/specialty experience, instructional experience and academic achievement.

(b) In order to receive approval as an instructor, an individual must achieve 100 points in the system employed below:

1. Section One

A maximum of 50 points can be claimed in this section.

(a) Licensed as a real estate broker or salesperson

Each year of experience = 10 points

or

(b) Work experience in a specialized field directly related to real estate

Each year of experience = 10 points

or

(c) Attorney, admitted to New York State Bar

Each year of experience = 10 points

2. Section Two

A maximum of 50 points can be claimed in this section.

Experience as an instructor = 10 points for each year

3. Section Three

A maximum of 30 points can be claimed in this section.

Formal academic achievement in a specialized subject matter directly related to real estate (five points for each 30 hour course successfully completed)

4. Section Four

50 points can be claimed in this section.

Formal training in the techniques of organizing and presenting instructional material

5. Section Five

Only one selection may be made in this section.

The holder of one of the following:

AAS Degree	20 points
B.A. or B.S. Degree	30 points
M.A. or L.L.D. or JDDegree	40 points
B.A., B.S. or M.A. with a Major in Real Estate	50 points

(c) An approved entity, which engages presenters to conduct classes identified as technical subjects, are exempt from the provisions of this section 176.11 except that an approved entity must make application to the Department of State accompanied by a resume indicating at least three years of experience in the specified technical area.

(d) All points claimed are subject to verification within two years of application.

(e) Any applicant who fails to provide evidence of claimed points may be subjected to disciplinary action.

§176.12 [*Reserved*]

§176.13 [*Reserved*]

§176.14 Auditing

A duly authorized designee of the department may audit any course offered, and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

§176.15 College degree major in real estate

Evidence satisfactory to the department of the successful completion of a course of study at any accredited college or university in the United States of America, approved by the Commissioner of Education of the State of New York or by a regional accrediting agency accepted by said Commissioner of Education, which has a program leading to a recognized collegiate degree, which includes therein a major in real estate, may be deemed acceptable for the educational credit under §§176.3 and 176.4 of this Part, provided attendance at such real estate course is not less than 120 hours in the case of an applicant for licensure as a real estate broker, and 75 hours in the case of an applicant for licensure as a real estate salesperson, and the applicant presents evidence of the issuance of a bachelor's degree and that he has passed the required course in real estate.

§176.16 Suspensions and denials of course approval

Within 45 days after the receipt of the application for approval of an offering, the department shall inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering. The department may deny, suspend, or revoke the approval of a real estate course or a real estate instructor, if it is determined that they are not in compliance with the law and rules, or if the offering does not adequately reflect and present current real estate knowledge as a basis for a level of real estate practice. If disciplinary action is taken, a written order of suspension, revocation or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his designee.

§176.17 Open to public

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any real estate board, or real estate related professional society or organization.

§176.18 [*Reserved*]

§176.19 [*Reserved*]

§176.20 Certificate of completion

(a) Evidence of successful completion of the course must be furnished to students in certificate form. The certificate must indicate the following: name of the entity; Real Estate Salesperson's Course, 75 hours, or Real Estate Broker's Course, 45 hours; code number of the entity; a statement that the student, who shall be named, has satisfactorily completed a course of study in real estate subjects approved by the Secretary of State in accordance with the provisions of chapter 868 of the Laws of 1977, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The certificate must be signed by the owner or course coordinator and dated, and must have affixed thereto the official seal of the school or entity.

(b) A list of all the names of students who successfully complete each course of study must be submitted to the Department of State within 15 days of completion.

§176.21 Fees

Each school or entity shall pay an annual registration fee of $300 for each 12 months or part thereof, and an additional registration fee of $150 for each 12 months or part thereof for each location in excess of one where courses are to be given, said period to run from each September 1st to the subsequent August 31st. For each teacher employed to teach the Real Estate Broker's or Real Estate Salesperson's course, each school or entity shall pay a one-time registration fee of $25. Fees shall be payable on submission of the application or applications, and are nonrefundable.

§176.22 Distance learning

Distance Education is defined as any educational process based on the geographical separation of instructor and learner (for example, CD-ROM, disk, on-line learning). Educational providers who wish to offer distance learning programs must have their programs evaluated and approved in accordance with the provisions of this Part, specifically sections 176.23, 176.24 and 176.25.

§176.23 Distance learning program requirements:

(a) the material of a distance learning program must be divided into major units;

(b) the contents of major units must be divided into modules of instructions;

(c) the distance learning program must contain a time-default mechanism for inactivity so that a student is not credited when not actively participating in the program;

(d) the school or other person offering the program must obtain from each student a signed and dated statement that he or she personally completed each module of the learning program;

(e) the school or other person offering the program must retain a record of each student's participation in and completion of the distance learning program for a period of three years, and such records must be available for review and inspection by the Department of State;

(f) the educational provider must have an instructor approved pursuant to section 176.11 of this Part available to students, during reasonable business hours, to answer questions pertaining to the qualifying course content;

(g) the course must include a proctored final examination which must be held at a location within New York State approved by the Department.

§176.24 Request for approval of distance learning programs

Applications for approval to conduct distance learning courses of study to satisfy the requirements for licensed real estate salesperson and broker shall be made 60 days before the proposed course is to be conducted. The application shall be prescribed by the Department to include the following:

(a) name, business address and telephone number of the proposed school which will present the course;

(b) if applicant is a partnership, the names and home addresses of the partners in the entity, of a corporation, the names and home addresses of any persons who own five percent or more of the stock of the entity.

(c) the name, home and business address and telephone number of the education coordinator that will be responsible for administering the regulations contained in this part;

(d) locations where the final examination will be conducted;

(e) title of each course to be conducted;

(f) final examination to be presented for each course, including the answer key;

(g) all times included on each test form must be consistent with content specifications indicated for each course. Weighing of significant content areas should fall within the weight ranges indicated. All reference sources used to support each correct answer must be included. Linkage to each answer must be indicated with a footnote showing page number, subject matter, etc.;

(h) the books that will be used for the outline and the final exams;

(i) an explanation of the means for monitoring and verifying each student's active participation, on an ongoing basis, during each module of instruction;

(j) a brief description of the hardware and software to be used by the student;

(k) a plan for providing technical support to the student;

(l) a detailed course outline divided into major units; the contents of major units must be divided into modules of instruction;

(m) a detailed outline for local concerns when applying for broker course approval.

§176.25 Course completion for distance learning courses

(a) The student must successfully complete a distance learning course within 12 months of starting the program. This includes the passing of the school's final examination.

(b) A list of the names of students who successfully complete each course of study must be submitted to the Department of State within 15 days of completion.

(c) The school or other person offering a program must provide evidence of successful completion of the course to each student in certificate form. The certificate must indicate the following: name of entity; Real Estate Salesperson's Course, 75 hours, or Real Estate Broker's Course, 45 hours; code number of entity; a statement that the student, who shall be named, has satisfactorily completed a course of study in real estate subjects approved by the Secretary of State in accordance with the provisions of chapter 868 of the Laws of 1977, and that his or her attendance record was satisfactory and in conformity with the law, and that such course was completed on a stated date. The

certificate must be signed by the owner or course coordinator and dated, and must have affixed thereto the official seal of the school or entity.

§176.26 30 hour supplemental course

(a) Applicants for licensure as a real estate broker who successfully completed the 45 hour salesperson qualifying course prior to July 1, 2008 may take a 30 hour supplemental course which, if successfully completed, may be used by said applicant in conjunction with the 45 hour salesperson qualifying course towards satisfying the salesperson educational requirements for licensure as a real estate broker, as provided in section 176.4(a) of this Part.

(b) The following are the required subjects to be included in the 30 hour supplemental course and the required number of hours to be devoted to each such subject:

Contract preparation	1 hour
Predatory lending	1 hour
Pricing properties	1 hour
Municipal agencies	2 hours
Property insurance	2 hours
Taxes and assessments	3 hours
Condominiums and cooperatives	4 hours
Commercial and investments properties	10 hours
Income tax issues and real estate transactions	3 hours
Mortgage brokerage	1 hour
Property management	2 hours
Total	30 hours
Final Exam	2 hours
TOTAL	32 hours

PART 177
CONTINUING EDUCATION

Section

177.1 General requirement
177.2 Approved entities
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§177.1 General requirement

(a) Renewals. No renewal license shall be issued to any real estate broker or salesperson for any license period commencing on or after 11/1/95 unless such licensee shall provide evidence of completion of 22½ hours of approved continuing education within the two-year period immediately preceding such renewal. However, such continuing education requirement shall not apply to any licensed real estate broker who is engaged full-time in the real estate business and who has been licensed prior to July 1, 2008 for at least 15 consecutive years immediately preceding such renewal.

(b) Course approval. No offering of a course of study in the real estate field for the purpose of compliance with the continuing education requirements of subdivision 3 of §441 of the Real Property Law shall be acceptable for credit unless such course of study shall have been approved by the department under the provisions of this Part.

§177.2 Approved entities

Continuing education real estate courses and offerings may be given by any college or university accredited by the Commissioner of Education of the State of New York or by a regional accrediting agency approved by said Commissioner of Education; public or private vocational schools; real estate boards; and real estate-related professional societies and organizations. Courses, including sales or technology, that increase the competency of the licensee as it relates to the real estate transaction shall be acceptable as meeting continuing education requirements subject to the restrictions set forth in paragraph (d) of this section. No real estate course of study seeking approval may be affiliated with or controlled by a real estate broker, salesperson, firm or company or real estate franchise, or controlled by a subsidiary of any real estate broker or real estate franchise. The following types of instruction shall not be acceptable as meeting continuing education requirements:

(a) general training or education to prepare a student for passing a real estate broker's or salesperson's examination which is not part of an approved course under Part 176 of this Title;

(b) offerings in mechanical office and business skills, such as typing, basic computer skills training, instructional navigation of the world wide web, instructional use of generic computer software, speed reading, memory improvement, report writing, personal motivation, salesmanship and sales psychology;

(c) sales promotion meetings; and

(d) subjects that are not real estate related.

§177.3 Request for approval of course of study in class-room setting

The following applies to courses to be presented in a class-room setting where the instructor is present with the class. Requests for approval of courses of study in the real estate field to be given to satisfy the requirements for continuing education under the provisions of this Part shall be made 60 days before the proposed course is to be given, and on a form prescribed by the department which shall include the following:

(a) name, address and telephone number of the applicant;

(b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;

(c) title of each course to be offered;

(d) date and location of each course offered;

(e) duration and time of each course offered;

(f) procedure for taking attendance;

(g) a detailed outline of the subject matter of each course or seminar containing at least 22½ hours of instruction, or of each course module

containing at least three hours of instruction, together with the time sequence of each segment thereof, the faculty for each segment, and teaching techniques used in each segment; and

(h) description of materials to be distributed to the participants.

§177.4 Successful completion of course in classroom setting

(a) Any subject course for continuing education shall be accepted for credit on the basis of attendance only. The course administrator must submit to the department within 15 days the names and license registration numbers of all individuals who successfully completed the approved course.

(b) Evidence of successful completion of the course must be furnished to students in certificate form. The certificate must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student who shall be named has satisfactorily completed a continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the owner or course coordinator.

§177.5 Credit for teaching

A licensee who shall teach an approved real estate course pursuant to Part 176 of this Subchapter or an approved subject offered for continuing education shall be credited with two hours for each hour of actual teaching performed. Records of such teaching shall be maintained by the person or organization presenting the course and certified on forms prescribed by the department. The records of such teaching shall be deemed records of attendance for all purposes of these rules.

§177.6 Extension of time to complete courses

The department may grant a waiver to any licensee who evidences bona fide hardship precluding completion of the continuing education requirements prior to the time the renewal application is to be filed. A licensee seeking such a waiver shall file the appropriate renewal application, together with the evidence demonstrating such hardship, together with a written request for such waiver.

§177.7 Computation of instruction time

To meet the minimum statutory requirement, attendance shall be computed on the basis of an hour equaling 60 minutes.

§177.8 Attendance

(a) No licensed person shall receive credit for any course or course module presented in a classroom setting if he or she is absent from the class room, during any instructional period, for a period or periods totaling more than 10 percent of the time prescribed for the course or course module pursuant to section 177.3(g) or section 177.21(e) of this Part, and no licensed person shall be absent from the classroom except for a reasonable and unavoidable cause. If a course or course module is computer based and is not presented in a classroom setting, no licensed person shall receive credit for the course or course module if he or she fails to complete any portion of the course or course module.

(b) The person or organization conducting the course shall certify to the department the name of each licensed person who successfully completed the course of study and his or her license registration number, and shall maintain its attendance records and a copy of such report for three years and, in addition, shall maintain the following record concerning the course:

(1) the approval number issued by the department for the course;

(2) the offering, title and description of the course;

(3) the dates and hours the course was given; and

(4) the names of the persons who took the course and whether they passed or failed.

§177.9 [*Reserved*]

§177.10 [*Reserved*]

§177.11 Auditing

A duly authorized designee of the department may audit any course offered and may verify attendance and inspect the records of attendance of the course at any time during its presentation or thereafter.

§177.12 [*Reserved*]

§177.13 Change in approved course of study

There shall be no change or alteration in any approved course of study of any subject or in any instruction staff without prior written notice to, and approval by, the department.

§177.14 Suspensions and denials of course approval

Within 45 days after the receipt of the application for approval of an offering, the department shall inform the entity as to whether the offering has been approved, denied, or whether additional information is needed to determine the acceptability of the offering. The department may deny, suspend or revoke the approval of a real estate course or a real estate instructor, if it is determined that they are not in compliance with the law and rules or if the offering does not adequately reflect and present current real estate knowledge as a basis for a level of real estate practice. If disciplinary action is taken, a written order of suspension, revocation, or denial of approval will be issued. Anyone who objects to such denial, suspension or revocation shall have the opportunity to be heard by the Secretary of State or his designee.

§177.15 Open to public

All courses approved pursuant to this Part shall be open to all members of the public regardless of the membership of the prospective student in any real estate board, or real estate-related professional society or organization.

§177.16 Facilities

Each course shall be presented in such premises and in such facilities as shall be necessary to properly present the course. No course shall be presented in any real estate broker's office or the office of any association of real estate brokers, except as otherwise may be permitted under these rules.

§177.17 Faculty

A person intending to present an approved course shall first be qualified pursuant to §176.11 of this Title.

§177.18 Continuing education credit

(a) A salesperson who has received credit for a broker qualifying course pursuant to Part 176 of this Subchapter during a period of time as defined in section 441(3)(a) of the Real Property Law, shall receive continuing education credit for such course for such period.

(b) A salesperson may receive 19½ hours of continuing education credit for successfully completing the approved 30 hour supplemental course as described in section 176.26 of this Subchapter; provided, however, that in order to complete the 22½ hours of continuing education required in Real Property Law section 441(3)(a), such salesperson must also complete three hours of instruction pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property.

(c) No continuing education course will be considered for continuing education credit more than once within the two year cycle of renewal.

§177.19 Registration period

Each registration or renewal period for approved programs or courses shall be for 12 months or a part thereof, said period to commence on January 1st or date thereafter and to continue until December 31st.

§177.20 Distance learning programs-computer based

Distance education is defined as any educational process based on the geographical separation of instructor and learner (*e.g.*, CDROM, disk, on-line learning, etc.). Educational providers who wish to offer distance learning programs must have their programs evaluated and approved in accordance with the provisions of this Part, including specifically sections 177.21 and 177.22.

§177.21 Request for approval of distance learning programs

Each request for approval of a distance learning program shall be made at least 60 days before the proposed course is to be offered and shall include the following:

(a) name, address and telephone number of the applicant;

(b) if applicant is a partnership, the names of the partners in the entity; if a corporation, the names of any persons who own five percent or more of the stock of the entity;

(c) title of each course to be offered;

(d) duration and time of each course offered;

(e) a detailed outline of the subject matter of each course, together with the time sequence of each major unit and module;

(f) the disk or CD-ROM for the course or access to the on-line course;

(g) an explanation of the means for monitoring and verifying each student's active participation, on an ongoing basis, during each module of instruction;

(h) a brief description of the hardware and software to be used by the student; and

(i) a plan for providing technical support to the student.

§177.22 Distance learning program requirements

To be approved, a distance learning program must meet the following criteria:

(a) the material of a distance learning program must be divided into major units;

(b) the contents of major units must be divided into modules of instruction;

(c) the distance learning program must contain a time-default mechanism for inactivity so that a student is not credited when not actively participating in the program;

(d) the school or other person offering the program must obtain from each student a signed and dated statement that he or she personally completed each module of the learning program;

(e) the school or other person offering the program must retain a record of each student's participation in and completion of the distance-learning program for a period of three years, and such record must be available for review and inspection by the Department of State;

(f)-(g) [*Reserved*]

(h) the school or other person offering the program must provide evidence of successful completion of the course to each student in certificate form. The certificate must indicate the following: the name of the approved entity, the name of the course, the code number of the course, and that the student, who shall be named, has satisfactorily completed the continuing education course approved by the Department of State and the number of hours earned. The certificate must be signed and dated by the owner or course coordinator or other person offering the program; and

(i) the school or other person offering the program must submit to the Department of State within 15 days the names and license registration numbers of all individuals who successfully completed the approved course.

PART 178
NONSOLICITATION ORDERS

Section

178.1 Definition of nonsolicitation order
178.2 [*Reserved*]
178.3 Residential property
178.4 Boundary streets
178.5 Prohibited forms of solicitation

§178.l Definition of nonsolicitation order

A nonsolicitation order is a directive to all real estate brokers and real estate salespersons. The nonsolicitation order directs that all brokers and salespersons must refrain from soliciting listings for the sale of residential property within a designated geographic area. A nonsolicitation order prohibits any and all types of solicitation directed at or toward homeowners in the designated geographic area. The types of solicitation that are prohibited include but are not limited to letters, postcards, telephone calls, door-to-door calls, handbills, and postings in public areas. In addition, a nonsolicitation order may contain such other terms or conditions as the Secretary of State may determine are, on balance, in the best interest of the public, which shall include but not be limited to the affected owners and licensees.

§178.2 [*Reserved*]

§178.3 Residential property

For the purposes of this Part, the term residence or residential property shall include any of the following:

(a) a one-family residence;

(b) a two-family residence;

(c) a three-family residence;

(d) a residential cooperative apartment; and

(e) a residential condominium unit.

§178.4 Boundary streets

For the purposes of this Part, a nonsolicitation area shall include all properties abutting the boundary streets named in the description of the nonsolicitation area. The intent being that the nonsolicitation area shall include properties on both sides of the boundary streets.

§178.5 Prohibited forms of solicitation

(a) Within a nonsolicitation area, no real estate broker or real estate salesperson shall engage in any form of solicitation where the purpose of such solicitation is, directly or indirectly, to obtain a listing of residential property for sale and where such solicitation is directed at or toward a homeowner or occupant of residential property within a designated nonsolicitation area.

(b) The following are examples of the types of solicitation that are prohibited:

(1) letters;

(2) postcards;

(3) handbills or leaflets or fliers;

(4) direct advertising delivered by mail or other service;

(5) telephone calls;

(6) door-to-door calls; and

(7) postings in public places.

(c) The following is not prohibited by a nonsolicitation order. Advertisements that are published in newspapers of general circulation:

(1) if such newspaper has a general readership throughout the metropolitan New York City area or throughout a substantial portion of the metropolitan New York City area;

(2) if such newspaper is published not less than once per week; and

(3) if such newspaper is sold by subscription or by individual copy and is not distributed free of charge.

PART 179
DETERMINATION OF REAL ESTATE EXPERIENCE

Section

179.1 Qualifying experience
179.2 Point system
179.3 Experience point schedule

§179.l Qualifying experience

An applicant for licensure as a real estate broker must possess two years of full-time experience as a licensed real estate salesperson under the supervision of a licensed real estate broker or the equivalent full-time experience in general real estate business for a period of at least three years.

§179.2 Point system

(a) An applicant will receive credit for such experience according to the point system set forth in section 179.3 of this Part.

(b) 3500 points shall equate to two years of full-time experience.

(c) Upon request by the department, either prior to or after licensure, an applicant shall provide documentation or other proof to substantiate any or all of the experience claimed by the applicant. Failure to promptly provide the requested documentation or proof shall be grounds to deny the application, or if the applicant has been licensed, shall be grounds to suspend or revoke such license. Any false claim of experience shall be grounds to deny the application, or if the applicant has been licensed, shall be grounds to suspend or revoke such license.

§179.3 Experience point schedule

(a) Experience points shall be credited an applicant in accordance with the following schedule:

REAL ESTATE BROKER POINT SYSTEM FOR LICENSED SALESPERSON ACTIVITY ONLY

Category		Point Value
RESIDENTIAL SALES:		
1.	Single Family, condo, co-op unit, multi- family (2 to 8-unit), farm (with residence, under 100 acres)	250
2.	Exclusive listings	10
3.	Open listings	1
4.	Binders effected	25
5.	Co-op unit transaction approved by seller and buyer that fails to win Board of Directors approval	100
RESIDENTIAL RENTALS:		
6.	Rentals or subleases effected	25
7.	Exclusive Listings	5
8.	Open Listings	1
9.	Property Management	
	- Lease renewal	2
	- Rent collections per tenant/per year	1
COMMERCIAL SALES:		
10.	Taxpayer	400
11.	Office Building	400
12.	Apartment Building (9 units or more)	400
13.	Shopping Center	400
14.	Factory/Industrial warehouse	400
15.	Hotel/Motel	400
16.	Transient garage/parking lot	400
17.	Multi-unit commercial condominium	400
18.	Urban commercial development site	400
19.	Alternative sale type transaction	400
20.	Single-tenant commercial condo	250
21.	Listings	10
COMMERCIAL LEASING:		

22.	New Lease-aggregate rental $1 to $200,000	150
23.	New Lease-aggregate rental $200,000 to $1 million	250
24.	New Lease-aggregate rental over $1 million	400
25.	Renewal-aggregate renewal $1 to $200,000	75
26.	Renewal-aggregate rental $200,000 to $1 million	125
27.	Renewal-aggregate rental over $1 million	200
28.	Listings	10
COMMERCIAL FINANCING:		
(includes residential properties of more than four units):		
29.	$1 to $500,000	200
30.	$500,000 to $5,000,000	300
31.	Over $5,000,000	400
MISCELLANEOUS:		
32.	Sale vacant lots, land (under 100 acres)	50
33.	Sale vacant land (more than 100 acres)	150
34.	Other must be fully explained.	—
TOTAL POINTS NEEDED:		**3500**

(b) An applicant shall have the burden of establishing to the satisfaction of the department that the applicant actually performed the work associated with the real estate transaction claimed as experience credit.

GLOSSARY OF REAL ESTATE TERMS

A

Abstract of Title - A summary of al1 of the recorded instruments and proceedings which affect the title to property, arranged in the order in which they were recorded.

Accretion - The addition of land through processes of nature, as by water or wind.

Accrued Interest - Accrue; to grow; to be added to. Accrued interest is interest that has been earned but not due and payable.

Acknowledgment - A formal declaration before a duly authorized officer by a person who has executed an instrument that such execution is the person's act and deed.

Acquisition - An act or process by which a person procures property.

Acre - A measure of land equaling 43,560 square feet.

Action for Specific Performance - A court action to compel a defaulting principal to comply with the provisions of a contract.

Adjacent - Lying near to but not necessarily in actual contact with.

Adjoining - Contiguous; attaching, in actual contact with.

Administrator - A person appointed by court to administer the estate of a deceased person who left no will; i.e., who died intestate.

Ad Valorem - According to valuation.

Adverse Possession - A means of acquiring title where an occupant has been in actual, open, notorious, exclusive, and continuous occupancy of property under a claim of right for the required statutory period.

Affidavit - A statement or declaration reduced to writing, and sworn to or affirmed before some officer who is authorized to administer an oath or affirmation.

Affirm - To confirm, to ratify, to verify.

Agency - That relationship between principal and agent which arises out of a contract either expressed or implied, written or oral, wherein an agent is employed by a person to do certain acts on the person's behalf in dealing with a third party.

Agent - One who undertakes to transact some business or to manage some affair for another by authority of the latter.

Agreement of Sale - A written agreement between seller and purchaser in which the purchaser agrees to buy certain real estate and the seller agrees to sell upon terms and conditions set forth therein.

Air Rights - Rights in real property to use the space above the surface of the land.

Alienation - A transferring of property to another; the transfer of property and possession of lands, or other things, from one person to another.

Alienation Clause - Allows lender to require the balance of a loan to be paid in full if the collateral is sold (also known as a "due on sale" clause).

Amortization - A gradual paying off of a debt by periodic installments.

Apportionment - Adjustment of the income, expenses or carrying charges of real estate usually computed to the date of closing of title so

that the seller pays all expenses to that date. The buyer assumes all expenses commencing the date the deed is conveyed to the buyer.

Appraisal - An estimate of a property's value by an appraiser who is usually presumed to be expert in his work.

Appraisal by Income Capitalization Approach - An estimate of value by capitalization of productivity and income.

Appraisal by Sale Comparison Approach - Comparability with the sale prices of other similar properties.

Appraisal by Cost Approach - Adding together all parts of a property separately appraised to form a whole: e.g., value of the land considered as vacant added to the cost of reproduction of the building, less depreciation.

Appurtenance - Something which is outside the property itself but belongs to the land and adds to its greater enjoyment such as a right-of-way or a barn or a dwelling.

Assessed Valuation - A valuation placed upon property by a public officer or a board, as a basis for taxation.

Assessment - A charge against real estate made by a unit of government to cover a proportionate cost of an improvement such as a street or sewer.

Assessor - An official who has the responsibility of determining assessed values.

Assignee - The person to whom an agreement or contract is assigned.

Assignment - The method or manner by which a right or contract is transferred from one person to another.

Assignor - A party who assigns or transfers an agreement or contract to another.

Assumption of Mortgage - The taking of title to property by a grantee, wherein the grantee assumes liability for payment of an existing note or bond secured by a mortgage against a property and becomes personally liable for the payment of such mortgage debt.

Avulsion - A sudden and perceptible loss or addition to land by the action of water, or a sudden change in the bed or course of a stream.

B

Balloon Mortgage Payment - A large payment during the term of a mortgage, often at the end.

Beneficiary - The person who receives or is to receive the benefits resulting from certain acts.

Bequeath - To give or hand down by will; to leave by will.

Bequest - That which is given by the terms of a will.

Bill of Sale - A written instrument given to pass title of personal property from vendor to vendee.

Binder - An agreement to cover the down payment for the purchase of real estate as evidence of good faith on the part of the purchaser.

Blanket Mortgage - A mortgage covering more than one property. A blanket mortgage is often used for subdivision financing.

Blockbusting - The practice of inducing homeowners in a particular neighborhood to sell their homes quickly, often at below market prices, by creating the fear that the entry of a minority group or groups into the neighborhood will cause a precipitous decline in property values.

Bona Fide - In good faith, without fraud.

Bond - The evidence of a personal debt which is secured by a mortgage or other lien on real estate.

Building Code - Regulations established by state or local governments stating fully the structural requirements for building.

Building Line - A line fixed at a certain distance from the front and/or sides of a lot, beyond which no building can project.

Building Loan Agreement - An agreement whereby the lender advances money to an owner primarily in the erection of buildings. Such funds are commonly advanced in installments as the structure is completed.

Building Permit - Written governmental permission for the construction, renovation or substantial repair of a building.

C

Cancellation Clause - A provision in a lease or other contract which confers upon one or more of all of the parties to the lease the right to terminate the party's or parties' obligations thereunder upon the occurrence of the condition or contingency set forth in the said clause.

Capital Appreciation - The appreciation accruing to the benefit of the capital improvement to real estate.

Capital Asset - Any asset of a permanent nature used for the production of income.

Capital Gain - Income that results from the sale of an asset not in the usual course of business. (Capital gains may be taxed at a lower rate than ordinary income.)

Capital Improvement - Any structure erected as a permanent improvement to real estate, usually extending the useful life and value of a property. (The replacement of a roof would be considered a capital improvement.)

Capital Loss - A loss from the sale of an asset not in the usual course of business.

Caveat Emptor - Let the buyer beware. The buyer must examine the goods or property and buy at the buyer's own risk.

Cease and Desist List - Upon the establishment of a cease and desist zone by the Secretary, a list of homeowners who have filed owner's statements expressing their wish not to be solicited by real estate brokers or salespersons. Soliciting of listed homeowners by licensees is prohibited. Violators of such prohibition are subject to licensure suspension or revocation.

Cease and Desist Zone - A rule adopted by the Secretary of State which prohibits the direct solicitation of homeowners whose names and addresses appear on a cease and desist list maintained by the Secretary. Such rule may be adopted upon the Secretary's determination that some homeowners within a defined geographic area have been subject to intense and repeated solicitation by real estate brokers and salespersons.

Certificate of Occupancy (CO) - A document issued by a governmental authority that a building is ready and fit for occupancy.

Chain of Title - A history of conveyances and incumbrances affecting a title from the time the original patent was granted, or as far back as records are available.

Chattel - Personal property, such as household goods.

Client - The one by whom a broker is employed.

Closing Date - The date upon which the property is conveyed by the seller to the buyer.

Cloud on the Title - An outstanding claim or incumbrance which, if valid, would affect or impair the owner's title.

Collateral - Additional security pledged for the payment of an obligation.

Color of Title - That which appears to be good title, but which is not title in fact.

Commingling - To mingle or mix, for example, a client's funds in the broker's personal or general account.

Commission - A sum due a real estate broker for services in that capacity.

Commitment - A pledge or a promise or affirmation agreement.

Completion Bond - A bond used to guarantee that a proposed subdivision development will be completed.

Condemnation - Taking private property for public use, with fair compensation to the owner; exercising the right of eminent domain.

Conditional Sales Contract - A contract for the sale of property stating that delivery is to be made to the buyer, title to remain vested in the seller until the conditions of the contract have been fulfilled.

Consideration - Anything given to induce another to enter into a contract such as money or personal services.

Constructive Notice - Information or knowledge of a fact imputed by law to a person because the person could have discovered the fact by proper diligence and inquiry (e.g. via public records).

Contingency - A provision in a contract that requires the occurrence of a specific event before the contract can be completed.

Contract - An agreement between competent parties to do or not to do certain things which is legally enforceable, whereby each party acquires a right.

Conversion - Change from one character or use to another.

Conveyance - The transfer of the title of land from one to another. The means or medium by which title of real estate is transferred.

Covenants - Agreements written into deeds and other instruments promising performance or nonperformance of certain acts, or stipulating certain uses or nonuses of the property.

Cul-de-sac - A blind alley: a street with only one outlet.

Current Value - The value usually sought to be estimated in an appraisal.

D

Damages - The indemnity recoverable by a person who has sustained an injury, either to his/her person, property, or relative rights, through the act or default of another.

Debit - The amount charged as due or owing.

Debt Capital - Money borrowed for a particular business purpose.

Debt Service - Annual amount to be paid by a debtor on an obligation to repay borrowed money.

Decedent - One who is dead.

Decree - Order issued by one in authority; an edict or law; a judicial decision.

Dedication - A grant and appropriation of land by its owner for some public use, accepted for such use, by an authorized public official on behalf of the public.

Deed - An instrument in writing duly executed and delivered, that conveys title to real property.

Deed Restriction - An imposed restriction in a deed for the purpose of limiting the use of the land such as:

1. A restriction against the sale of liquor thereon.
2. A restriction as to the size, type, value or placement of improvements that may be erected thereon.

Default - Failure to fulfill a duty or promise, or to discharge an obligation; omission or failure to perform any acts.

Defeasance Clause - The clause in a mortgage that permits the mortgagor to redeem his or her property upon the payment of the obligations to the mortgagee.

Deficiency Judgment - A judgment given when the security for a loan does not entirely satisfy the debt upon its default.

Delivery - The transfer of the possession of a thing from one person to another.

Demand Note - A note which is payable on demand of the holder.

Demising Clause - A clause found in a lease whereby the landlord (lessor) leases and the tenant (leasee) takes the property.

Depreciation - Loss of value in real property brought about by age, physical deterioration, or functional or economic obsolescence.

Descent - When an owner of real estate dies intestate, the owner's property descends, by operation of law, to the owner's distributees.

Devise - A gift of real estate by will or last testament.

Devisee - One who receives a bequest of real estate made by will.

Devisor - One who bequeaths real estate by will.

Dispossess Proceedings - Summary process by a landlord to oust a tenant and regain possession of the premises for nonpayment of rent or other breach of conditions of the lease or occupancy.

Documentary Evidence - Evidence in the form of written or printed papers.

Dual Agency - Representing both principals (seller and buyer) to a transaction.

Duress - Unlawful constraint exercised upon a person whereby the person is forced to do some act against the person's will.

E

Earnest Money - Down payment made by a purchaser of real estate as evidence of good faith.

Easement - A right that may be exercised by the public or individuals on, over or through the lands of others.

Economic Life - The period over which a property will yield the investor a return on the investment.

Economic Obsolescence - Lessened desirability or useful life arising from economic forces, such as changes in optimum land use, legislative enactments which restrict or impair property rights, and changes in supply-demand ratios.

Ejectment - A form of action to regain possession of real property, with damages for the unlawful retention; used when there is no relationship of landlord and tenant.

Eminent Domain - A right of the government to acquire property for necessary public use by condemnation; the owner must be fairly compensated.

Encroachment - A building, part of a building, or obstruction which intrudes upon or invades a highway or sidewalk or trespasses upon the property of another.

Encumbrance - Any right to or interest in the land interfering with its use or transfer, or subjecting it to an obligation. (Also Incumbrance)

Endorsement - An act of signing one's name on the back of a check or note, with or without further qualifications.

Equity - The interest or value which the owner has in real estate over and above the liens against it.

Equity Loan - Junior loan based on a percentage of the equity.

Equity of Redemption - A right of the owner to reclaim property before it is sold through foreclosure proceedings, by the payment of the debt, interest and costs.

Erosion - The wearing away of land through processes of nature, as by water and winds.

Escheat - The reversion to the State of property in event the owner thereof abandons it or dies, without leaving a will and has no distributees to whom the property may pass by lawful descent.

Escrow - A written agreement between two or more parties providing that certain instruments or property be placed with a third party to be delivered to a designated person upon the fulfillment or performance of some act or condition. (See Rule 175.1)

Estate - The degree, quantity, nature and extent of interest which a person has in real property.

Estate in Reversion - The residue of an estate left for the grantor, to commence in possession after the termination of some particular estate granted by the grantor.

Estate at Will - The occupation of lands and tenements by a tenant for an indefinite period, terminable by one or both parties at will.

Estoppel Certificate - An instrument executed by the mortgagor setting forth the present status and the balance due on the mortgage as of the date of the execution of the certificate.

Eviction - A legal proceeding by a lessor landlord to recover possession of real property.

Eviction, Actual - Where one is either by force or by process of law, actually put out of possession.

Eviction, Constructive - Any disturbance of the tenant's possession of the leased premises by the landlord whereby the premises are rendered unfit or unsuitable for the purpose for which they were leased.

Exclusive Agency - An agreement of employment of a broker to the exclusion of all other brokers; if sale is made by any other broker during term of employment, broker holding exclusive agency is entitled to commissions in addition to the commissions payable to the broker who effected the transaction. (See Rule 175.24)

Exclusive Right to Sell - An agreement of employment by a broker under which the exclusive right to sell for a specified period is granted to the broker; if a sale during the term of the agreement is made by the owner or by any other broker, the broker holding such exclusive right to sell is nevertheless entitled to compensation. (See Rule 175.24)

Executor - A male person or a corporate entity or any other type of organization named or designed in a will to carry out its provisions as to the disposition of the estate of a deceased person.

Executrix - A woman appointed to perform the same duties as an executor.

Extension Agreement - An agreement which extends the life of a mortgage to a later date.

F

Fee; Fee Simple; Fee Absolute - Absolute ownership of real property; a person has this type of estate where the person is entitled to the entire property with unconditional power of disposition during the person's life and descending to the person's heirs or distributees.

Fiduciary - A person who on behalf of or for the benefit of another transacts business or handles money or property not the person's own; such relationship implies great confidence and trust.

Fixtures - Personal property so attached to the land or improvements as to become part of the real property.

Foreclosure - A procedure whereby property pledged as security for a debt is sold to pay the debt in the event of default in payments or terms.

Freehold - An interest in real estate, not less than an estate for life. (Use of this term discontinued Sept. 1, 1967.)

G

Grace Period - Additional time allowed to perform an act or make a payment before a default occurs.

Graduated Leases - A lease which provides for a graduated change at stated intervals in the amount of the rent to be paid; used largely in long-term leases.

Grant - A technical term used in deeds of conveyance of lands to indicate a transfer.

Grantee - The party to whom the title to real property is conveyed.

Grantor - The person who conveys real estate by deed; the seller.

Gross Income - Total income from property before any expenses are deducted.

Gross Lease - A lease of property whereby the lessor is to meet all property charges regularly incurred through ownership.

Ground Rent - Earnings of improved property credited to earning of the ground itself after allowance made for earnings of improvements.

Group Boycott - An agreement between members of a trade to exclude other members from fair participation in the trade.

H

Habendum Clause - The "to have and to hold" clause which defines or limits the quantity of the estate granted in the premises of the deed.

Holdover Tenant - A tenant who remains in possession of leased property after the expiration of the lease term.

I

Incompetent - A person who is unable to manage his/her own affairs by reason of insanity, imbecility or feeblemindedness.

In Rem - A proceeding against the realty directly; as distinguished from a proceeding against a person. (Used in taking land for nonpayment of taxes, etc.)

Installments - Parts of the same debt, payable at successive periods as agreed; payments made to reduce a mortgage.

Instrument - A written legal document; created to effect the rights of the parties.

Interest Rate - The percentage of a sum of money charged for its use.

Intestate - A person who dies having made no will, or leaves one which is defective in form, in which case the person's estate descends to the person's distributees in the manner prescribed by law.

Involuntary Lien - A lien imposed against property without consent of the owner, e.g., taxes, special assessments.

Irrevocable - Incapable of being recalled or revoked; unchangeable; unalterable.

J

Joint Tenancy - Ownership of realty by two or more persons, each of whom has an undivided interest with the "right of survivorship."

Judgment - A formal decision issued by a court concerning the respective rights and claims of the parties to an act or suit.

Junior Mortgage - A mortgage second in lien to a previous mortgage.

L

Laches - Delay or negligence in asserting one's legal rights.

Landlord - One who rents property to another.

Lease - A contract whereby, for a consideration, usually termed rent, one who is entitled to the possession of real property transfers such rights to another for life, for a term of years, or at will.

Leasehold - The interest or estate which a lessee of real estate has therein by virtue of the lessee's lease.

Lessee - A person to whom property is rented under a lease.

Lessor - One who rents property to another under a lease.

Lien - A legal right or claim upon a specific property which attaches to the property until a debt is satisfied.

Life Estate - The conveyance of title to property for the duration of the life of the grantee.

Life Tenant - The holder of a life estate.

Lis Pendens - A legal document, filed in the office of the county clerk giving notice that an auction or proceeding is pending in the courts affecting the title to the property. (Not applicable in commission disputes.)

Listing - An employment contract between principal and agent, authorizing the agent to perform services for the principal involving the latter's property.

Littoral Rights - The right of a property owner whose land borders on a body of water, such as a lake, ocean or sea, to reasonable use and enjoyment of the shore and water the property borders on.

M

Mandatory - Requiring strict conformity or obedience.

Market Allocation - An agreement between members of a trade to refrain from competition in specific market areas.

Market Price - The actual selling price of a property.

Market Value - The most probable price that a property should bring if exposed for sale in the open market for a reasonable period of time, with both the buyer and seller aware of current market conditions, neither being under duress.

Marketable Title - A title which a court of equity considers to be so free from defect that it will enforce its acceptance by a purchaser.

Mechanic's Lien - A lien given by law upon a building or other improvement upon land, and upon the land itself, to secure the price of labor done upon, and materials furnished for, the improvement.

Meeting of the Minds - Whenever all parties to a contract agree to the substance and terms thereof.

Metes and Bounds - A term used in describing the boundary lines of land, seeing forth all the boundary lines together with their terminal points and angles.

Minor - A person under an age specified by law; usually under 18 years of age.

Monument - A fixed object and point established by surveyors to establish land locations.

Mortgage - An instrument in writing, duly executed and delivered, that creates a lien upon real estate as security for the payment of a specified debt, which is usually in the form of a bond.

Mortgage Commitment - A formal indication by a lending institution that it will grant a mortgage loan on property in a certain specified amount and on certain specified terms.

Mortgage Reduction Certificate - An instrument executed by the mortgagee, setting forth the present status and the balance due on the mortgage as of the date of the execution of the instrument.

Mortgagee - The party who lends money and takes mortgage to secure the payment thereof.

Mortgagor - A person who borrows money and gives a mortgage on the person's property as security for the payment of the debt.

Multiple Listing - An arrangement among Real Estate Board of Exchange Members, whereby each broker presents the broker's listings to the attention of the other members so that if a sale results, the commission is divided between the broker bringing the listing and the broker making the sale. (See Rule 175.24)

N

Net Listing - A price below which an owner will not sell the property, and at which price a broker will not receive a commission; the broker receives the excess over and above the net listing as the broker's commission. (See Rule 175.19)

Nonsolicitation Order - A rule adopted by the Secretary of State which prohibits any or all types of solicitation directed towards homeowners within a defined geographic area. Such rule may be adopted after a public hearing and upon the Secretary's determination that homeowners within the subject area have been subject to intense and repeated solicitations by real estate brokers or salespersons and that such solicitations have caused owners to reasonably believe that property values may decrease because persons of different race, ethnic, religious or social backgrounds are moving or about to move into such area.

Notary Public - A public officer who is authorized to take acknowledgments to certain classes of documents, such as deeds, contracts, mortgages, and before whom affidavits may be sworn.

O

Obligee - The person in whose favor an obligation is entered into.

Obligor - The person who binds himself/herself to another; one who has engaged to perform some obligation; one who makes a bond.

Obsolescence - Loss in value due to reduced desirability and usefulness of a structure because its design and construction become obsolete; loss because of becoming old fashioned, and not in keeping with modern means, with consequent loss of income.

Open Listing - A listing given to any number of brokers without liability to compensate any except the one who first secures a buyer ready, willing and able to meet the terms of the listing, or secures the

acceptance by the seller of a satisfactory offer; the sale of the property automatically terminates the listing.

Option - A right given for a consideration to purchase or lease a property upon specified terms within a specified time; if the right is not exercised the option holder is not subject to liability for damages; if exercised, the grantor of option must perform.

P

Partition - The division which is made of real property between those who own it in undivided shares.

Party Wall - A wall built along the line separating two properties, partly on each, which wall either owner, the owner's heirs and assigns has the right to use; such right constituting an easement over so much of the adjoining owner's land as is covered by the wall.

Percentage Lease - A lease of property in which the rental is based upon the percentage of the volume of sales made upon the leased premises, usually provides for minimum rental.

Performance Bond - A bond used to guarantee the specific completion of an endeavor in accordance with a contract.

Personal Property - Any property which is not real property.

Plat Book - A public record containing maps of land showing the division of such land into streets, blocks and lots and indicating the measurements of the individual parcels.

Plottage - Increment in unity value of a plot of land created by assembling smaller ownerships into one ownership.

Points - Discount charges imposed by lenders to raise the yields on their loans.

Police Power - The right of any political body to enact laws and enforce them, for the order, safety, health, morals and general welfare of the public.

Power of Attorney - A written instrument duly signed and executed by a person which authorizes an agent to act on his/her behalf to the extent indicated in the instrument.

Prepayment Clause - A clause in a mortgage which gives a mortgagor the privilege of paying the mortgage indebtedness before it becomes due.

Price Fixing - Conspiring to establish fixed fees or prices for services or products.

Principal - The employer of an agent or broker; the broker's or agent's client.

Probate - To establish the will of a deceased person.

Proration - Allocation of closing costs and credits to buyers and sellers.

Purchase Money Mortgage - A mortgage given by a grantee in part payment of the purchase price of real estate.

Q

Quiet Enjoyment - The right of an owner or a person legally in possession to the use of property without interference of possession.

Quiet Title Suit - A suit in court to remove a defect, cloud or suspicion regarding legal rights of an owner to a certain parcel of real property.

Quit Claim Deed - A deed which conveys simply the grantor's rights or interest in real estate, without any agreement or covenant as to the nature or extent of that interest, or any other covenants; usually used to remove a cloud from the title.

R

Racial Steering - The unlawful practice of influencing a person's housing choice based on his/her race.

Real Estate Board - An organization whose members consist primarily of real estate brokers and salespersons.

Real Estate Syndicate - A partnership formed for participation in a real estate venture. Partners may be limited or unlimited in their liability.

Real Property - Land, and generally whatever is erected upon or affixed thereto.

Realization of Gain - The taking of the gain or profit from the sale of property.

Realtor - A coined word which may only be used by an active member of a local real estate board, affiliated with the National Association of Real Estate Boards.

Reconciliation - The final stage in the appraisal process where the appraiser reviews the data and estimates the subject property's value.

Recording - The act of writing or entering in a book of public record instrument affecting the title to real property.

Recourse - The right to a claim against a prior owner of a property or note.

Redemption - The right of a mortgagor to redeem the property by paying a debt after the expiration date and before sale at foreclosure; the right of an owner to reclaim the owner's property after the sale for taxes.

Red-Lining - The refusal to lend money within a specific area for various reasons. This practice is illegal.

Referee's Deed - Used to convey real property sold pursuant to a judicial order, in an action for the foreclosure of a mortgage or for partition.

Release - The act or writing by which some claim or interest is surrendered to another.

Release Clause - A clause found in a blanket mortgage which gives the owner of the property the privilege of paying off a portion of the mortgage indebtedness, and thus freeing a portion of the property from the mortgage.

Rem - (See In Rem)

Remainder - An estate which takes effect after the termination of a prior estate, such as a life estate.

Remainderman - The person who is to receive the property after the termination of the prior estate.

Rent - The compensation paid for the use of real estate.

Reproduction Cost - Normal cost of exact duplication of a property as of a certain date.

Restraint of Trade - Business practices designed to restrict competition, create a monopoly, control prices and otherwise obstruct the free operation of business.

Restriction - A limitation placed upon the use of property contained in the deed or other written instrument in the chain of title.

Reversionary Interest - The interest which a grantor has in lands or other property upon the termination of the preceding estate.

Revocation - An act of recalling a power of authority conferred, as the revocation of a power of attorney; a license, an agency, etc.

Right of Survivorship - Right of the surviving joint owner to succeed to the interests of the deceased joint owner, distinguishing feature of a joint tenancy or tenancy by the entirety.

Right-of-Way - The right to pass over another's land pursuant to an easement or license.

Riparian Owner - One who owns land bounding upon a river or watercourse.

Riparian Rights - The right of a property owner whose land borders a natural water course, such as a river, to reasonable use and enjoyment of the water that flows past the property. Riparian literally means "riverbank."

S

Sales Contract - A contract by which the buyer and seller agree to terms of sale.

Satisfaction Piece - An instrument for recording and acknowledging payment of an indebtedness secured by a mortgage.

Second Mortgage - A mortgage made by a home buyer in addition to an existing first mortgage.

Seizin - The possession of land by one who claims to own at least an estate for life therein.

Setback - The distance from the curb or other established line, within which no buildings may be erected.

Situs - The location of a property.

Special Assessment - An assessment made against a property to pay for a public improvement by which the assessed property is supposed to be especially benefitted.

Specific Performance - A remedy in a court of equity compelling a defendant to carry out the terms of an agreement or contract.

Statute - A law established by an act of the Legislature.

Statute of Frauds - State law which provides that certain contracts must be in writing in order to be enforceable at law.

Statute of Limitations - A statute barring all right of action after a certain period of time from the time when a cause of action first arises.

Subagent - An agent of a person already acting as an agent of a principal.

Subdivision - A tract of land divided into lots or plots.

Subletting - A leasing by a tenant to another, who holds under the tenant.

Subordination Clause - A clause which permits the placing of a mortgage at a later date which takes priority over an existing mortgage.

Subscribing Witness - One who writes his/her name as witness to the execution of an instrument.

Surety - One who guarantees the performance of another; guarantor.

Surrender - The cancellation of a lease by mutual consent of the lessor and the lessee.

Surrogate's Court (Probate Court) - A court having jurisdiction over the proof of wills, the settling of estates and of citations.

Survey - The process by which a parcel of land is measured and its area ascertained; also the blueprint showing the measurements, boundaries and area.

T

Tax Sale - Sale of property after a period of nonpayment of taxes.

Tenancy in Common - An ownership of realty by two or more persons, each of whom has an undivided interest, without the "right of survivorship."

Tenancy by the Entirety - An estate which exists only between husband and wife with equal right of possession and enjoyment during their joint lives and with the "right of survivorship."

Tenancy at Will - A license to use or occupy lands and tenements at the will of the owner.

Tenant - One who is given possession of real estate for a fixed period or at will.

Tenant at Sufferance - One who comes into possession of lands by lawful title and keeps it afterwards without any title at all.

Testate - Where a person dies leaving a valid will.

Tie-in Arrangement - A contract where one transaction depends upon another.

Title - Evidence that owner of land is in lawful possession thereof; evidence of ownership.

Title Insurance - A policy of insurance which indemnifies the holder for any loss sustained by reason of defects in the title.

Title Search - An examination of the public records to determine the ownership and incumbrances affecting real property.

Torrens Title - System of title records provided by state law; it is a system for the registration of land titles whereby the state of the title, showing ownership and incumbrances, can be readily ascertained from an inspection of the "register of titles" without the necessity of a search of the public records.

Tort - A wrongful act, wrong, injury; violation of a legal right.

Transfer Tax - A tax charged under certain conditions on the property belonging to an estate.

U

Urban Property - City property; closely settled property.

Usury - On a loan, claiming a rate of interest greater than that permitted by law.

V

Valid - Having force, or binding force; legally sufficient and authorized by law.

Valuation - Estimated worth or price. The act of valuing by appraisal.

Variance - The authorization to improve or develop a particular property in a manner not authorized by zoning.

Vendee's Lien - A lien against property under contract of sale to secure deposit paid by a purchaser.

Violations - Act, deed or conditions contrary to law or permissible use of real property.

Void - To have no force or effect; that which is unenforceable.

Voidable - That which is capable of being adjudged void, but is not void unless action is taken to make it so.

W

Waiver - The renunciation, abandonment, or surrender of some claim, right or privilege.

Warranty Deed - A conveyance of land in which the grantor warrants the title to the grantee.

Water Rights - The right of a property owner to use water on, under or adjacent to the land for such purposes as irrigation, power or private consumption.

Will - The disposition of one's property to take effect after death.

Wraparound Loan - A new loan encompassing any existing loans.

Z

Zone - An area set off by the proper authorities for specific use; subject to certain restrictions or restraints.

Zoning Ordinance - Act of city or county or other authorities specifying type and use to which property may be put in specific areas.