

Guidance for Real Estate Professionals Concerning the Statewide Housing Security & Tenant Protection Act of 2019 and the Housing Stability and Tenant Protection Act of 2019

INTRODUCTION TO THE NEW LAWS

On June 14, 2019, [Governor Andrew Cuomo](#) signed into law the Statewide Housing Security & Tenant Protection Act of 2019 and the Housing Stability & Tenant Protection Act of 2019 (the Acts).

The Acts are a sweeping and comprehensive collection of new provisions that strengthen tenant protections for all New Yorkers. To help licensed real estate brokers, salespeople, and other interested parties understand the new law, the New York State Department of State (the Department) has prepared this guidance. Please visit our website at www.dos.ny.gov periodically for important updates.

The information offered below should not be used in lieu of seeking appropriate legal advice and is not intended to answer general questions by private landlords, cooperative boards, or condominium boards regarding the Acts. This guidance is subject to change and licensed professionals should frequently visit this page for important updates based on future interpretations of the Acts by the courts.

WHAT DO THE ACTS PROTECT?

The Acts broadly protects applicants seeking housing and tenants throughout the state. For specific information concerning rent regulated rentals and how the Acts applies to those units please visit [Homes and Community Renewal](#) (HCR).

DO THE ACTS RESTRICT APPLICATION FEES FOR RENTALS?

Yes, under the Acts a “landlord, lessor, sub-lessor or grantor” is now prohibited from collecting an application fee greater than \$20.00 unless otherwise provided for by law or regulation. NY Real Property Law § 238-a(1)(b). Further, “if the potential tenant provides a copy of a background check or credit check conducted within the past thirty days” **the fee must be waived**. NY Real Property Law § 238-a(1)(b).

The \$20.00 limitation applies to licensed real estate brokers and salespeople acting as an agent of the “landlord, lessor, sub-lessor or grantor”.

A licensed agent that collects a fee greater than \$20.00 or fails to advise the landlord that such fees are prohibited may be subject to discipline by the Department pursuant to Section 441-c of the New York Real Property Law. Additionally, if a prohibited fee is collected and the property is subject to rent regulation, the tenant may also seek appropriate relief through HCR. The rule does

not apply to licensed agents when the agent has been formally engaged to represent the interests of the prospective tenant or when the agent is brokering the sale of a property, including within a cooperative or condominium.

In the absence of a decision from a court or other body with jurisdiction to determine such matters, the Department is not taking a position about the legality, under NY Real Property Law § 238-a, of an agent's collection of fees greater than \$20.00 on behalf of a cooperative or condominium board when the board is not the owner of the rental apartment/unit (i.e., the board requires a separate application fee from all rental applicants in addition to the \$20.00 fee collected by the owner/landlord). Accordingly, the Department, until further notice, will not subject a licensed agent to discipline if such agent collects a fee greater than \$20.00 on behalf of a cooperative or condominium board when the board is not the owner of the rental apartment/unit. However, the Department cautions agents that the collection of such fees may nonetheless violate other laws, such as the prohibition against source of income discrimination.

Anyone seeking to file a complaint with the Department against a licensed real estate broker or salesperson may download a complaint form:

https://www.dos.ny.gov/licensing/complaint_links.html

Anyone seeking to file a complaint with HCR concerning a rent regulated apartment may download an overcharge complaint form from the Office of Rent Administration <https://hcr.ny.gov/overcharge>.

DO THE ACTS RESTRICT USE OF PRIOR DISPUTES?

Yes, under the Acts, no landlord shall refuse to rent or offer a lease to a potential tenant on the basis that the potential tenant was involved in a past or pending landlord-tenant action. NY Real Property Law §227-f.

This restriction applies to licensed real estate brokers and salespeople Acting as an agent of the “landlord”.

DO THE ACTS RESTRICT LATE RENT FEES?

Yes, under the Acts no “landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the late payment of rent unless the payment of rent has not been made within five days of the date it was due, and such payment, fee, or charge shall not exceed fifty dollars or five percent of the monthly rent, whichever is less.” NY Real Property Law § 238-a(2).

This restriction applies to licensed real estate brokers and salespeople Acting as an agent of the “landlord, lessor, sub-lessor or grantor”.

WHEN DO SECURITY DEPOSITS HAVE TO BE RETURNED?

Under the Acts, a landlord must “[w]ithin fourteen days after the tenant has vacated the premises, ... provide the tenant with an itemized statement indicating the basis for the amount of the deposit retained, if any, **and shall return any remaining portion of the deposit to the tenant.** If a landlord fails to provide the tenant with the statement and deposit within fourteen days, the landlord shall forfeit any right to retain any portion of the deposit.” New York General Obligations Law § 7-108(1-a)(e).

An agent who is working for a landlord and is holding a security deposit is required to comply with this section.

1. CAN A LANDLORD’S AGENT REQUEST ADVANCE RENT PAYMENTS OR SECURITY DEPOSITS GREATER THAN ONE’S MONTH RENT?

No, unless otherwise provided by applicable law, Section 7-108(1-a)(a) of the NY GOL states, in part, “No deposit or advance shall exceed the amount of one month’s rent under such contract.” An agent representing a landlord may not request advance rent payments or security deposits greater than one’s month rent regardless of the length of the proposed tenancy.

For example, a landlord retains an agent to locate a tenant for a short-term rental (e.g., 3-6 months). Under such situations, the agent must advise the landlord/prospective tenant that an agreement calling for upfront rent payments (e.g., the full-term rent) prior to the end of the tenancy or a security deposit larger than the pro-rata portion of one month is void. NY GOL § 7-108(3). A broker that requests advance rent payments/security deposits greater than one’s month rent can be subject to discipline.

However, the Department will not seek to impose discipline against a licensee, where for example, a prospective tenant receives a government subsidy and as part of that program an advance payment is paid.

2. CAN A LANDLORD’S AGENT COLLECT AN ADDITIONAL SECURITY DEPOSIT FOR PETS OR MOVE IN EXPENSES?

No, Section 7-108(1-a)(a) of the New York General Obligations Law (NY GOL) states, in part, “No deposit or advance shall exceed the amount of one month’s rent under such contract.” A deposit is intended, in part, to reimburse a landlord’s costs “beyond normal wear and tear, non-payment of utility charges payable directly to the landlord under the terms of the lease or tenancy, and moving and storage of the tenant’s belongings. The landlord may not retain any amount of the deposit for costs relating to ordinary wear and tear of occupancy or damage caused by a prior tenant.” NY GOL § 7-108(1-a)(b). A broker acting on behalf of a landlord and who collects an additional pet deposit or move in fee can be subject to discipline pursuant to Section 441-c of the New York Real Property Law (NY RPL).

3. WHEN A LANDLORD’S AGENT IS HOLDING A SECURITY DEPOSIT IN ESCROW, HOW LONG AFTER THE TENANT LEAVES THE PROPERTY DOES THE SECURITY, IF ANY, HAVE TO BE RETURNED?

Section 7-108(1-a)(e) of the NY GOL requires that the deposit, if any, be returned within fourteen days. Accordingly, the Department will not seek to impose discipline against a licensee that returns such deposit within fourteen calendar days. When the last day happens to fall on a Saturday, Sunday or public holiday, the deposit can be returned on the next business day.

4. CAN A LANDLORD’S AGENT COLLECT AN APPLICATION FEE FOR MORE THAN ONE PERSON APPLYING TO LEASE A PROPERTY?

Yes, unless the specific unit or tenant’s application is subject to another agency’ regulations or rules, a broker or agent may charge up to a \$20.00 fee per applicant when there is more than one individual from whom a credit/background check will be required in order to commence the lease. NY RPL § 238-a(1)(b) provides, in part, “A landlord, lessor, sub-lessor or grantor may charge a fee or fees to reimburse costs associated with conducting a background check and credit check, provided the cumulative fee or fees for such checks is no more than the actual cost of the background check and credit check or twenty dollars, whichever is less, and the landlord, lessor, sub-lessor or grantor shall waive the fee or fees if the potential tenant provides a copy of a background check or credit check conducted within the past thirty days. The landlord, lessor, sub-lessor or grantor may not collect the fee or fees unless the landlord, lessor, sub-lessor

or grantor provides the potential tenant with a copy of the background check or credit check and the receipt or invoice from the entity conducting the background check or credit check.”

For fair market units not subject to any restrictions imposed by another agency having appropriate jurisdiction, the Department interprets “potential tenant” to mean the individual as opposed to the application itself. Accordingly, if more than one individual is required to submit a background check or credit check because he or she is an applicant that is signing the lease, a landlord’s agent may not be subject to discipline provided the fee complies with Section 238-a. If no background or credit checks are completed, the licensed agent may not collect any fee for processing the application prior to tenancy.

5. CAN A LANDLORD’S AGENT COLLECT A “BROKER FEE” FROM THE PROSPECTIVE TENANT?

**** UPDATE (FEBRUARY 10, 2020) ****

The Department’s earlier advisory in response to FAQ #5 has been enjoined by Albany County Supreme Court (*see Real Estate Bd. of New York v. New York State Department of State*, Sup Ct, Albany County, February 10, 2020, Mackey, J., Index No. 901-586-20). Accordingly, the Department has withdrawn its prior guidance and will post new guidance following a final determination of this issue by the Courts.

6. CAN A LANDLORD’S AGENT CONTINUE TO MAINTAIN A SECURITY DEPOSIT FROM A PRIOR LEASE THAT IS GREATER THAN ONE MONTH’S RENT?

If a lease was signed before July 14, 2019, the Department will not seek to impose discipline against a licensee acting as a landlord’s agent who continues to hold a previously received security deposit greater than one month’s rent under the terms of such prior lease agreement.

7. CAN A LANDLORD’S AGENT CONTINUE TO IMPOSE A LATE FEE FOR LATE RENT UNDER AN EXISTING LEASE?

If a lease was signed before July 14, 2019, the Department will not seek to impose discipline against a licensee acting as a landlord’s agent who continues to impose/collect late permissible fees, but an agent should not seek to collect a fee greater than allowed under the Acts. Under the new laws the landlord’s agent may not “demand any payment, fee, or charge for the late payment of rent unless the payment of rent has not been made within five days of the date it was due, and such payment, fee, or charge shall not exceed fifty dollars or five percent of the monthly rent, whichever is less.” NY RPL § 238-a(2).

8. DO THE ACTS AFFECT MY DUTIES WHILE REPRESENTING A LANDLORD OF A RENT REGULATED APARTMENT/BUILDING?

A licensed real estate professional with specific rent regulated questions should contact [Homes and Community Renewal](#).

9. DO THE ACTS AFFECT MY DUTIES TO WORK WITH A PROSPECTIVE TENANT SEEKING TO RENT AN APARTMENT WITH A PUBLIC ASSISTANCE VOUCHER?

A licensed real estate professional with specific questions regarding lawful sources of income (e.g., vouchers, minimum income requirements, etc.) should contact the [New York State Division of Human Rights](#).

10. DOES A LICENSED AGENT WORKING ON BEHALF OF THE LANDLORD HAVE TO PROVIDE A COPY OF A BACKGROUND OR CREDIT CHECK TO THE PROSPECTIVE TENANT, IF A FEE WAS CHARGED TO RUN SUCH REPORTS?

Yes, the agent may not collect any fees associated with running such reports without also providing the potential tenant with a copy. NY RPL § 238-a(1)(b) states: “The landlord, lessor, sub-lessor or grantor may

not collect the fee or fees unless the landlord, lessor, sub-lessor or grantor provides the potential tenant with a copy of the background check or credit check and the receipt or invoice from the entity conducting the background check or credit check.”

11. CAN A LICENSED AGENT WORKING ON BEHALF OF THE LANDLORD REQUIRE A POTENTIAL TENANT TO HAVE A BACKGROUND OR CREDIT CHECK COMPLETED BY A SPECIFIC COMPANY?

Yes, the agent working on behalf of the landlord may direct a potential tenant to use a specific company provided: 1) the potential tenant does not already have a background check or credit report completed within last 30 days and 2) that the total cost for both the background check and credit report does not exceed \$20.00. If the potential tenant provides a background or credit report completed within 30 days but the agent is reasonably concerned that the report was altered, the agent may ask for the original report, or pay the full cost to complete a new report(s). (See also, FAQ # 10).

12. CAN A LICENSED AGENT WORKING ON BEHALF OF THE LANDLORD REQUIRE A POTENTIAL TENANT TO PROVIDE A LIST OF REFERENCES?

Yes, the agent may request that a list of references be provided, however the agent may not question any of the references about past or pending landlord-tenant actions or summary proceedings under article seven of the real property actions and proceedings law. Section 227-f(1) of the NY RPL states: “No landlord of a residential premises shall refuse to rent or offer a lease to a potential tenant on the basis that the potential tenant was involved in a past or pending landlord-tenant action or summary proceeding under article seven of the real property actions and proceedings law. There shall be a rebuttable presumption that a person is in violation of this section if it is established that the person requested information from a tenant screening bureau relating to a potential tenant or otherwise inspected court records relating to a potential tenant and the person subsequently refuses to rent or offer a lease to the potential tenant.”

The Department may seek to pursue discipline against a licensee that attempts to evade the requirements of Section 227-f(1) by obtaining information from a prospective tenant’s list of references.

13. CAN A LICENSED AGENT REPRESENTING A RENTER LIVING IN A COOPERATIVE (I.E., THE PERSON THAT IS LEASING THE APARTMENT FROM THE INDIVIDUAL SHAREHOLDER) WHO IS SEEKING TO SUBLET THEIR APARTMENT COLLECT AN APPLICATION PROCESSING FEE GREATER THAN \$20.00 FOR A BACKGROUND OR CREDIT CHECK TO SUBLET HIS/HER UNIT?

No, an agent working for the tenant who is renting from the unit shareholder cannot collect an application processing fee to establish a new sublease because NY RPL § 238-a(1)(b) applies to a “landlord, lessor, sub-lessor or grantor” and in this transaction the original tenant would be the sub-lessor. (See also, FAQ # 4)

14. CAN A LICENSED AGENT WORKING ON BEHALF OF A COMMERCIAL LANDLORD COLLECT AN APPLICATION PROCESSING FEE GREATER THAN \$20.00?

The Acts do not impose any new requirements relating to commercial transactions; therefore, the \$20.00 fee cap would not apply.

IF I HAVE QUESTIONS WHERE CAN I GET HELP?

Licensed brokers and agents with questions about the Acts may contact the Department at: licensing@dos.ny.gov or contact 518-474-4429. Call Center Representatives are available from 8:30am to 4:30pm Monday through Friday except on Legal Holidays.

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