

# STROOCK

March 3, 2017

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New York Department of State—Division of Licensing  
Director, Division of Licensing  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231

Re: Introduction of StreetEasy's Premier Agent Program in New York City

Dear Ms. Clark:

I am counsel to the Real Estate Board of New York, Inc. ("REBNY"). Zillow and StreetEasy have recently announced the expansion of Zillow's Premier Agent Program on to StreetEasy's New York City advertising website. REBNY believes that, as currently formulated, the Premier Agent Program may violate the advertising regulations set forth in N.Y. Comp. Codes R. & Regs. tit. 19 §§ 175.25(b)(2)(b), (c)(4) and (d)(6).

REBNY is concerned the Premier Agent Program allows licensees to execute an end-run around the strict requirements of Section 175.25(b)(2)(b) and solicit leads and advertise on a listing firm's property without the listing firm's consent. The Premier Agent advertising also fails to include disclaimers required under Section 175.25(d)(6), and fails to notify the consumer: 1) their request for information about a property will be directed to an agent who has not been vetted by StreetEasy for quality or experience; 2) the Premier Agent has no connection to the property, has not been involved in a transaction involving the property, and may not even have knowledge of the property; and 3) the Premier Agent has paid StreetEasy for the leads. Unlike on other websites, where paid advertisers are prominently identified to consumers, here, the consumer has

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no idea which licensee is receiving their request for information, much less their license status, and are not advised that StreetEasy is being compensated for the “referral.”

Accordingly, we ask the Department of State to provide REBNY with an opinion concerning the legality of the Premier Agent Program, so that REBNY can provide its membership with the most accurate information about the Program’s regulatory compliance. In this letter, I will outline the Premier Agent Program, as described in StreetEasy’s most recent advertisement to New York City brokers and salespersons, and then identify the concerns of REBNY.

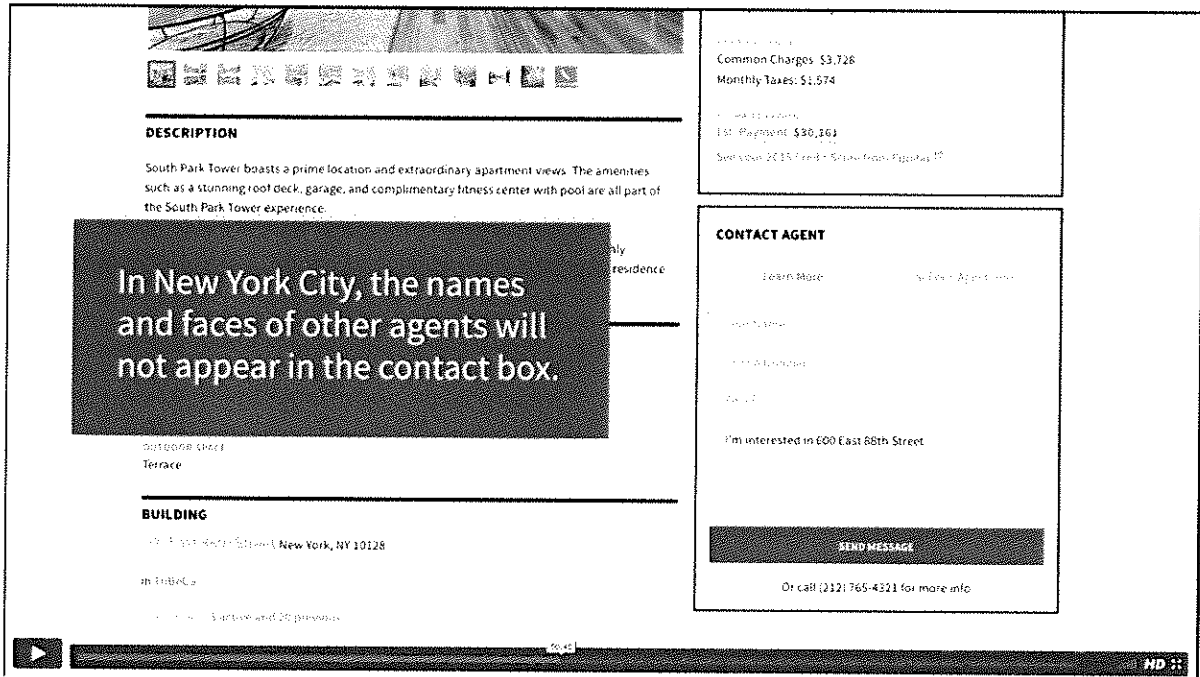
### **Overview of the Premier Agent Program**

Zillow announced recently that on March 1, 2017, StreetEasy will begin offering its Premier Agent Program to firms and licensees in New York City. Generally speaking, Zillow’s Premier Agent Program allows real estate professionals to “purchase” a certain zip code, and then Zillow will advertise that salesperson or broker as a “premier agent” on real estate listings submitted by other real estate professionals. As StreetEasy notes, the Premier Agent Program “enables agents to purchase advertising for buyer’s leads in specific zip codes.” (StreetEasy promotion, [https://vimeo.com/streeteasy/review/204644583/f752462fe9?utm\\_swu=1548&utm\\_source=agent\\_marketing&utm\\_medium=email&utm\\_campaign=170221\\_PA\\_Launch\\_SE\\_Agents\\_Video](https://vimeo.com/streeteasy/review/204644583/f752462fe9?utm_swu=1548&utm_source=agent_marketing&utm_medium=email&utm_campaign=170221_PA_Launch_SE_Agents_Video)).

For New York City, StreetEasy has announced some variations to the Premier Agent Program. First, on each listing page, there will be a “CONTACT AGENT” box that appears on the listing webpage with two tabs, one entitled “Learn More” – which is the default tab – and requests the consumer’s contact information, and then a second tab that is not highlighted (and must be clicked on to appear) about the “Seller’s Agent Info.” Neither the Listing Agent’s name nor the firm affiliation appears on the default listing page – the consumer has to click on the “Seller’s Agent Info” tab to obtain that information. Moreover, the names and faces of the Premier Agent will not appear in the “CONTACT AGENT” box, but they will receive the solicitation if a consumer uses the “Learn More” tab.

Additionally, StreetEasy uses the label “Seller’s Agent”, rather than “Listing Agent” – despite the fact that New York State recognizes the ability of an agent to serve as a

disclosed dual agent. A sample of the default listing page from StreetEasy's advertising video is excerpted below:



The “Learn More” tab also does not disclose to a consumer that they will be directed to a Premier Agent. Nor does the “Learn More” tab disclose to the consumer that their inquiry will be directed to someone who has purchased the “Premier Agent” status, and that it is not a reflection on the agent or broker’s skill level, experience, or knowledge of the property. There is also no mention of the Premier Agent’s license status.

In both its own advertising to real estate professionals, as well as its SEC filings, Zillow/StreetEasy acknowledges the Premier Agent Program constitutes advertising by real estate brokers and agents. As noted above, Zillow’s recent promotional video sets forth that the agents will “purchase advertising” through the Premier Agent Program. Moreover, in its most recent 10K filing with the SEC, dated February 7, 2017 (“Zillow 10K”), Zillow described the Premier Agent Program as “Marketplace Advertising”, which helped “real estate agents achieve their advertising needs”:

- “Premier Agent revenue is generated by the sale of advertising under our Premier Agent program, which offers a suite of marketing and business technology products and services to help real estate agents achieve their

advertising needs, while growing their businesses and personal brands.” (Zillow 10K, at 6).

- In another section, the Zillow 10K specifically includes the Premier Agent Program as part of its “Marketplace Advertising” and states: “Our Premier Agent program offers a suite of marketing and business technology products and services to help real estate agents achieve their advertising needs, while growing their businesses and personal brands.” (Zillow 10K, at 11).

### **Concerns of REBNY Regarding the Premier Agent Program**

The State of New York has enacted specific regulations designed to prevent misleading advertising and consumer confusion. Section 175.25 defines “advertising” to include any “promotion and solicitation related to licensed real estate activity, including but not limited to, advertising via ... websites . . .” N.Y. Comp. Codes R. & Regs. § 175.25(a)(1) (2017). The Premier Agent Program constitutes the “promotion and solicitation” of “licensed real estate activity”—the point of the Premier Agent Program is to provide lead generation and advertising services for agents and brokers in connection with the sale of specific advertised properties.

Section 175.25(b)(2)(b) prevents real estate brokers from “advertis[ing] property that is subject to an exclusive listing held by another real estate broker without the permission of the listing broker.” N.Y. Comp. Codes R. & Regs. § 175.25(b)(2)(b) (2017). Additionally, if a broker has received permission to advertise another firm’s listing, the broker must include “prominently displayed” disclaimers that make clear to a consumer the broker does not have the listing, and cannot suggest the broker was involved in a transaction when that is not the case:

Advertisements referencing property not listed with broker. Any advertisement that references or includes information about a property 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).

N.Y. Comp. Codes R. & Regs. tit. 19 § 175.25(d)(6) (2017). REBNY is concerned the Premier Agent Program appears to violate both provisions.

First, neither StreetEasy nor the Premier Agent obtains the specific consent of the listing firm to allow the Premier Agent to advertise or solicit on the listing firm's property listing. Indeed, there is no communication whatsoever between the Premier Agent and the listing firm, and StreetEasy does not advise the listing firm which Premier Agent has purchased the right to receive solicitations through the Premier Agent Program. StreetEasy may assert that it is not putting the Premier Agent's face or name on the listing, and thus the Premier Agent is not "advertising" the other firm's listing. But REBNY is concerned that StreetEasy is allowing the Premier Agent to do indirectly what it cannot do directly—advertise to and solicit consumers on another firm's listing without permission. The Premier Agent Program is identical to a real estate agent purchasing a billboard, advertising another firm's listing on the billboard without identifying that firm, and including just a telephone number or generic email (without the advertising agent's name or picture) for the consumer to use to contact someone for more information. In the non-electronic world, such a billboard would violate Section 175.25(b)(2)(b). In short, as currently structured, the Premier Agent Program appears to allow a licensee (and StreetEasy) to effectuate an end-run around the proscriptions of Section 175.25(b)(2)(b).

The Premier Agent advertisements also do not contain the disclaimers required by Section 175.25(d)(6). In fact, there is no disclaimer at all included on the proposed advertisements. Thus, the consumer is not advised that the licensee who will contact them may have absolutely no relation to or knowledge about the listing for which they submit the inquiry. Additionally, the Premier Agent directed to the consumer is not vetted in any way by StreetEasy, and is simply provided the lead based solely on the fact that the licensee has paid StreetEasy for the "Premier Agent" status. REBNY believes this material fact should be disclosed to consumers.

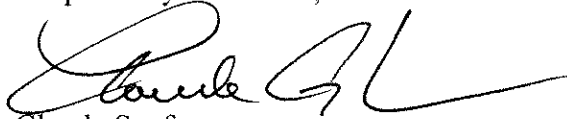
Finally, Section 175.25(c)(4) requires that all advertising include the correct license type for a licensee. REBNY is concerned that the "Premier Agent" title fails to conform to Section 175.25(c)(4), and omits any reference to the license type of the Premier Agent who will receive the solicitation.

We are prepared to meet with the DOS at its earliest convenience regarding this very important matter, as we would like to advise our membership about not violating the

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provisions of Section 175.25. Please do not hesitate to contact me at the above-referenced number or email. We look forward to hearing from you promptly.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Claude Szyfer", with a long horizontal flourish extending to the right.

Claude Szyfer

cc: David Mossberg, Esq.  
John Banks  
James Whalen