



REAL ESTATE BOARD OF NEW YORK

March 15, 2020

Mr. David A. Mossberg, Esq.
Associate Attorney, Office of the General Counsel
Department of State
123 William Street, 20th Floor
New York, NY 10038

RE: Comments on Proposed New Section to be added to Title 19 of the NYCRR

Dear Mr. Mossberg:

The Real Estate Board of New York, Inc. (“REBNY”) submits the following comments regarding a proposed new section to be added to Title 19 of the NYCRR in regard to notification of fair housing laws. REBNY is the leading real estate trade association representing commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople, and other organizations and individuals active in New York City real estate.

REBNY is keenly aware of the non-discriminatory practices that the federal Fair Housing Act (the “Act”) and similar state and local statutes impose upon licensed real estate practitioners. REBNY’s Education Division currently offers fair housing classes, both in-person and on-line, that satisfy the Department of State’s (“DOS”) continuing education requirements. And in light of the *Newsday* investigative series, *Long Island Divided*, published last November that exposed disregard of fair housing laws among licensees in Long Island, in December 2019, REBNY re-doubled its efforts to reinforce the fair housing laws’ requirements among our broker members by launching a weekly e-newsletter entitled *Fair Housing Fridays* that provides further guidance on adherence to these laws.

REBNY applauds DOS’ proposal to ensure that consumers are equally apprised of the fair housing laws and generally supports the proposed new sections to Title 19 of the NYCRR to accomplish just that. To ensure seamless implementation, REBNY offers the following comments.

Real Estate Broker Liability

Proposed new Section 175.29 provides that a “real estate broker shall be jointly liable for any violation of this section committed by any licensed individual associated with such broker.” While REBNY recognizes the duty of licensed real estate brokers to supervise salespersons under Section 175.21, the imposition of joint liability upon the licensed real estate broker is unduly punitive without any safe harbor provision to allow the subject broker to show what steps the broker took to ensure its licensees’ compliance. Real estate brokers should be held responsible for their acts and omissions under this new proposed section

particularly if the broker engages in a pattern or practice of discrimination. However, brokers should be afforded due process measures to show that the violation is solely the responsibility of the subject licensee.

Form of Notification

According to proposed new section 175.28, the notification of the fair housing laws will be furnished by DOS. REBNY suggests that the notification include language, in bold lettering stating, in substance, that the form is required to be disclosed and given to the consumer by law. Consumers are oftentimes put off by forms that must be signed before any transaction has transpired. Including such language could help the real estate licensee introduce and explain the notification.

Additionally, REBNY raises the following issues in each topic area:

Provision of Disclosure Form

Proposed new section 175.28(d) requires that the real estate licensee obtain a signed disclosure notice and if the consumer declines to sign the disclosure notice, the licensee “shall set forth under oath or affirmation a written declaration of the facts regarding when such notice was provided[.]” Agency Disclosure Forms under Section 443(2)(e) of Article 12-A of the Real Property Law require a similar oath or affirmation in cases where the consumer refuses to sign. However, given the more common methods of electronic delivery of disclosures used today, we request that DOS permit the electronic delivery of the Fair Housing Disclosure to prove that there was delivery to the consumer and thus negating the need for the Affirmation (we also suggest this in regard to the delivery of the Agency Disclosure Form).

Application to Commercial Properties

Proposed new section 175.28(c) provides that the disclosure requirements “shall apply to all real property whether or not it is used or occupied, or intended to be used or occupied, wholly or partly, as a home or residence ... and shall include ... commercial properties.” Proposed new section 175.29 also requires the posting in broker offices, branch offices and open houses of substantive provisions of the New York State Human Rights Law that relate to housing accommodations.

Read together, these provisions suggest that the fair housing posting requirements shall apply to commercial brokers and their offices. And that the disclosure requirements are imposed on all commercial property transactions. There is concern that the disclosure requirements might unnecessarily add confusion to a purely commercial transaction where there is no housing component. Accordingly, REBNY seeks to inquire about the intent behind the disclosure requirement for such transactions, and the scope of applicable commercial transactions.

In closing, REBNY appreciates and supports the DOS' efforts to promote transparency and consumer education. We also look forward to working with the DOS in implementing these provisions, and to assisting in the continued education of all licensees of the important anti-discrimination provisions. Please do not hesitate to contact me should the Department have any questions regarding the matters discussed here or to request REBNY's assistance in the roll-out of the new regulations.

Respectfully submitted,

/s/

Carl Hum
General Counsel