



Update on New York's New Fair Housing Laws

April 6, 2022

Patrick Fife, Esq.

Associate General Counsel

Long Island Board of REALTORS®

www.lirealtor.com/legal

www.lirealtor.com/fairhousing

Call for Candidates!

LIBOR's applications for 2023 Officer and 2023/2024 Director At-large are now live! Apply to be a leader at LIBOR and help shape the future of your association! [Read More](#)



New Fair Housing Laws

- On December 21, 2021, Governor Hochul signed a sweeping legislative package that included nine different bills to combat housing discrimination.
- The centerpiece of the legislation is the Anti- Discrimination in Housing Fund that will permit the state to conduct fair housing **testing**.
- Also an emphasis on increased **training** and **broker supervision**.



New Fair Housing Laws: Testing

- Establishment of an Anti-Discrimination in Housing Fund
 - supported by increased fines for violations of anti-discrimination laws, which have gone from \$1,000 to \$2,000.
- Added surcharges on licensing and re-licensing fees to be used for statewide fair housing efforts
 - \$30 for real estate brokers and \$10 for salespersons.



New Fair Housing Laws: Broker Supervision

- All associate real estate brokers who serve as **office managers**:
 - **must have been active as an associate real estate broker for at least two of the four preceding years before beginning duties as office manager; AND**
 - **“shall be required to exercise the same duty of supervision over salesman and associate brokers as a licensed real estate broker.”**
- In DOS proceedings brought against licensees, the DOS will now likely name principal broker and office manager in complaints for a “failure to supervise.”



What Constitutes Broker Supervision?

- Section §175.21(a) of DOS Rules and Regulations provides that “[t]he 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.**”
- Now both brokers and office managers need to think about the procedures they have in place to supervise the actions of their licensees.

New Fair Housing Laws: Broker SOP's

- Requirement that real estate brokers institute standardized operating procedures for the prerequisites prospective homebuyers shall meet prior to receiving any services, including procedures as the Secretary of State shall determine by regulation. **Effective April 20, 2022.**



What Do a Broker's SOP's Need to Include?

- Broker SOPs shall include:
 - (i) whether prospective clients shall show identification;
 - (ii) whether an exclusive broker agreement is required; and
 - (iii) whether pre-approval for a mortgage loan is required.



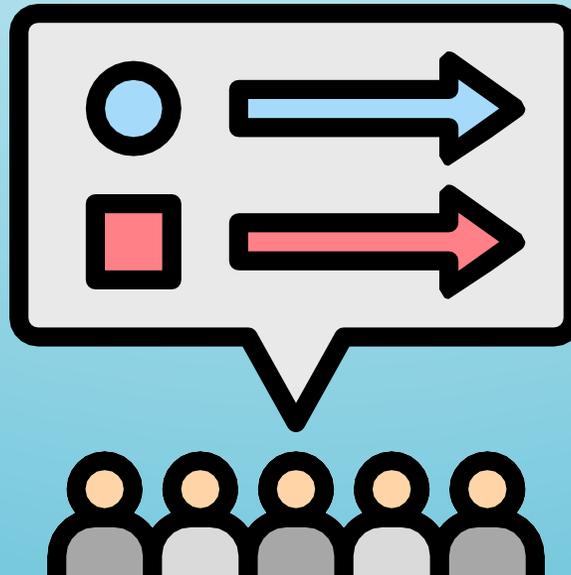


What Can a Broker Require in its SOP?

- Brokers can decide which documents, if any, the office will require from prospective buyers.
- Can require none, some, or all of the documents.
- For instance, a policy can provide the following: “Please be advised that prior to showing a purchaser a property: (1) we do require identification from a prospective purchaser, (2) we do not require a purchaser to sign an exclusive brokerage agreement and (3) we do not require a pre-approval for a mortgage loan in order to show a purchaser properties.”

SOP Must be Publicized and Followed

- Once the Broker decides which documents will be required, even if it is none, the Broker must publicize it in its SOP.
- The Broker must ensure that it follows the SOP equally for each prospective buyer.



Lawful Instructions of a Seller Can Supersede a Broker's SOP

- The only exception to following the Broker's SOP would be if a seller gave the Broker a lawful instruction that differed from the SOP.
- For instance, if a Broker's SOP did not require a mortgage pre-approval from prospective buyers, but a seller wanted a pre-approval from each potential buyer before showing the house, the Broker would have to follow the lawful instruction of the seller.
- This should be explained to prospective purchasers in the Broker's SOP.

STANDARDIZED OPERATING PROCEDURE FOR PURCHASERS OF REAL ESTATE
PURSUANT TO REAL PROPERTY LAW §442-H

_____ (the “Broker”) is making this Standardized Operating Procedure available on any publicly available website and mobile device application maintained by the Broker and any of its licensees and teams. Broker has copies of these Standardized Operating Procedures available to the public upon request at Broker’s office location.

Please be advised that Broker:

- | | |
|-----------------------------------|---|
| ___ Requires ___ Does not require | 1. Prospective buyer clients to show identification* |
| ___ Requires ___ Does not require | 2. Exclusive buyer broker agreements |
| ___ Requires ___ Does not require | 3. Pre-approval for a mortgage loan / proof of funds* |

***Although Broker may not require such information, a seller of real estate may require this information prior to showing the property and/or as part of any purchase offer.**

Acknowledgement of Broker

Broker:

By: _____

Name:

Title:

State of _____

County of _____

The foregoing document was acknowledged before me this ___ day of _____ 202__ by _____ who personally appeared who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument

A Broker's Affiliated Licensees Must Follow the Broker's SOP

- Brokers need to communicate their SOP's to their agents, teams and affiliated licensees.
- All agents, teams and affiliated licensees must follow their Brokers' SOP.
- For example, if a Broker does not require mortgage pre-approvals, no agent or team can require them.
- Agent's failure comply with this new law can result in sanctions by the New York State Department of State (DOS) against the agent and broker.



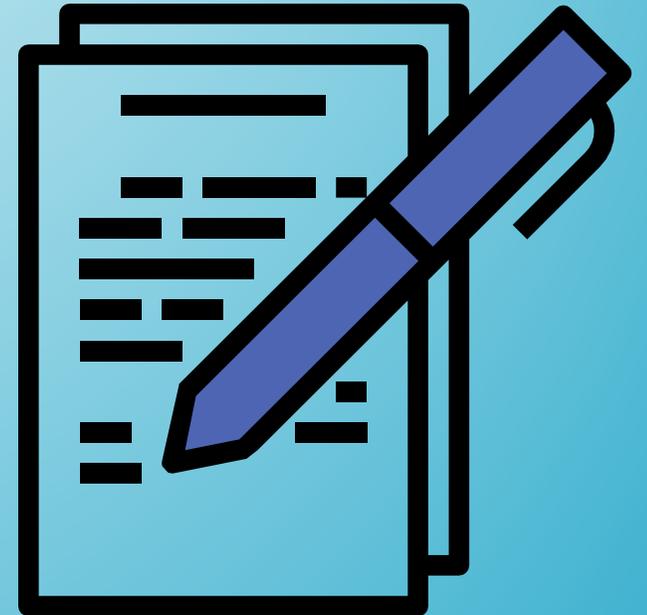
Where Do Broker SOP's Need to be Displayed?

- Real estate brokers must date stamp, notarize and post SOPs on any public websites, mobile apps, and upon request, at any office locations.
- Any Team website or mobile app must also post the Brokers' SOP or have a direct link to the Broker's website or mobile app.
- The DOS has always adopted a “clear and conspicuous” standard in other laws and regulations related to required postings on websites and/or mobile applications. The posting of the Broker's Procedures should follow the same standard.



What if a Broker Changes its SOP?

- Brokers can change their SOP.
- However, alterations to SOPs must also be date stamped and notarized within 30 days, posted to all websites and mobile apps and archived by the broker.

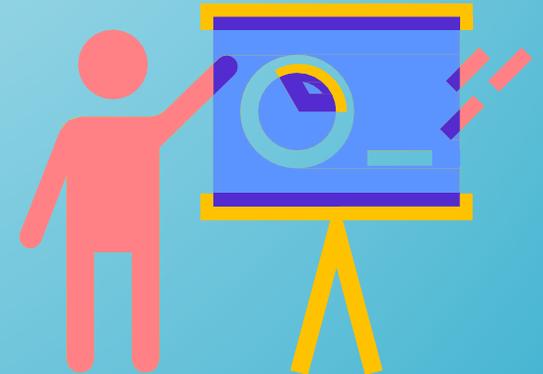


Where Can I Get a Sample Broker SOP?

- NYSAR has created an example sample Broker SOP
- Go to [lirealtor.com/fairhousing](https://www.lirealtor.com/fairhousing)
- Brokers are still strongly encouraged to speak to their own legal counsel and marketing departments as to the best way to implement and display the SOP.

New Fair Housing Laws: Training

- **Effective September 21, 2022**, 2 hours of implicit bias education have been added for real estate licensees within the 22.5 hours of CE requirements.
- **Effective September 21, 2022**, 2 hours of cultural competency education have been added for real estate licensees within the 22.5 hours of CE requirements.
 - NYS defines “cultural competency” as “understanding cultural norms, preferences and challenges within our diverse communities;”



New Fair Housing Laws: Training

- **Effective December 21, 2022**, pre-licensing broker and salesperson course hour requirements increased to 152 hours and 77 hours, respectively, with 6 hours focused on fair housing for salespersons.



New Disclosure Form for Rental Properties (NYS Executive Law §170-d)



New Disclosure Form for Rental Properties

- On March 25, 2021, Gov. Cuomo signed Executive Law §170-d.
- Requires Division of Human Rights (DHR) to promulgate regulations that would require landlords, managing agents and real estate licensees to provide a **Reasonable Modification and Accommodation Notice** to all prospective and current tenants of a “housing accommodation.”



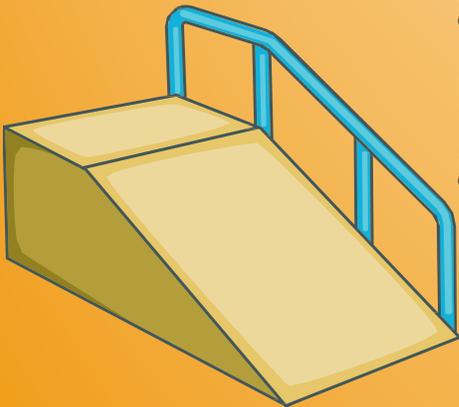
What is a Housing Accommodation?

- A “housing accommodation” as “any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings.”



What are Reasonable Modifications and Reasonable Accommodations?

- **Reasonable Modification** – A structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.
- **Reasonable Accommodation** – A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy the premises.



What Will the Disclosure Notice Do?

- The Notice will need to inform tenants of their rights to request reasonable modifications and accommodations.
- Will need to be in writing in 14 Point or other easily legible font.
- Must be provided at “first substantive contact” with a prospective tenant.
- Same standard for New York State Agency Disclosure and Housing and Anti-Discrimination Disclosure Forms.





How Does the Notice Need to be Delivered to Tenants?

- By email, text, electronic messaging system, facsimile, or hardcopy.
- An electronic communication containing a link to the Notice required pursuant to this regulation shall be permissible, provided the communication also contains text to inform the prospective tenant that the link contains information regarding tenants' rights to reasonable accommodations for persons with disabilities. The Notice must be available for printing and downloading.



How Does the Notice Need to be Delivered to Tenants?

- Oral disclosure and posting of the Notice, either on paper, on a bulletin board, or on an electronic bulletin board or notice area, does not satisfy the requirements of disclosure to prospective tenants.
- Tenant's agents should provide the Notice to all prospective tenants as the spirit of the law is for the disclosure to be provided to the prospective tenant so they know what rights they have for a reasonable modification or accommodation.

Where Will the Notice Need to be Posted?

- On Websites
- At Housing Accommodations
- At Real Estate Offices



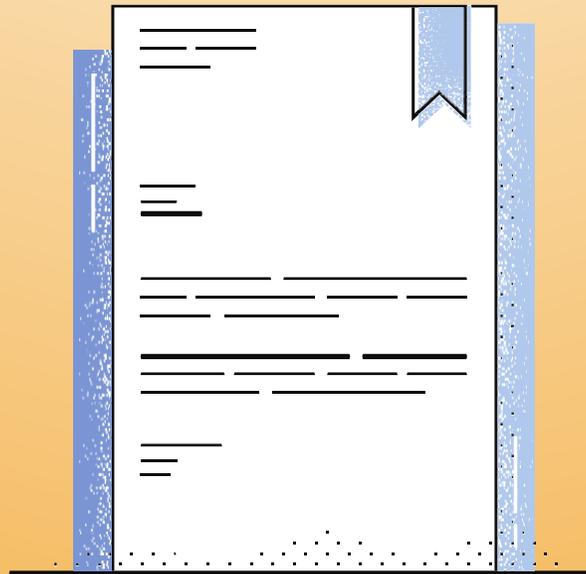
Where Will the Notice Get Posted on Websites?

- The Notice will need to be posted on all websites the broker creates and maintains by prominently and conspicuously displaying on the homepage of such websites a link to the Notice.



Where Will the Notice Need to Get Posted at Housing Accommodations?

- The Notice will need to be posted conspicuously in easily accessible and well-lighted places at all housing accommodations, where they may be readily observed by those seeking such housing accommodations and/or facilities or services in connection therewith.



Where Will the Notice Need to Get Posted at Real Estate Offices?

- The Notice must be posted conspicuously at all real estate offices and branch offices operated by the broker in an easily accessible and well-lighted place, where the Notice may be readily observed by those seeking housing accommodations or commercial space.



Owners/Landlords Will Also Need to Provide the Notice to Current Tenants & Post the Notice

- Housing providers that are the owner, lessee, sub-lessee, assignee, or managing agent of a housing accommodation will also need provide the Notice to all new and current tenants.
- They must also post the Notice.
- Landlord's agents should not advise housing providers on how to comply with the law.
- Licensees should advise housing providers to consult with their own legal counsel about how to ensure compliance.



Refresher on New York State's Fair Housing Regulations (19 NYCRR 175.28)

The New York State Department of State (DOS) Enacted New Fair Housing Regulations that went into Effect on June 20, 2020.

- New York State Housing and Anti-Discrimination Disclosure Form.
- New York State Fair Housing Notice.



New York State Housing and Anti-Discrimination Disclosure Form

 <p>NEW YORK STATE OF OPPORTUNITY.</p>	Division of Licensing Services	New York State Department of State, Division of Licensing Services (518) 474-4429 www.dos.ny.gov
New York State Division of Consumer Rights (888) 362-3644		
New York State Housing and Anti-Discrimination Disclosure Form		
<p>Federal, State and local Fair Housing Laws provide comprehensive protections from discrimination in housing. It is unlawful for any property owner, landlord, property manager or other person who sells, rents or leases housing, to discriminate based on certain protected characteristics, which include, but are not limited to race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, marital status, lawful source of income or familial status. Real estate professionals must also comply with all Fair Housing Laws.</p>		
Real estate brokers and real estate salespersons, and their employees and agents violate the Law if they:		
<ul style="list-style-type: none">• Discriminate based on any protected characteristic when negotiating a sale, rental or lease, including representing that a property is not available when it is available.• Negotiate discriminatory terms of sale, rental or lease, such as stating a different price because of race, national origin or other protected characteristic.• Discriminate based on any protected characteristic because it is the preference of a seller or landlord.• Discriminate by "steering" which occurs when a real estate professional guides prospective buyers or renters towards or away from certain neighborhoods, locations or buildings, based on any protected characteristic.• Discriminate by "blockbusting" which occurs when a real estate professional represents that a change has occurred or may occur in future in the composition of a block, neighborhood or area, with respect to any protected characteristics, and that the change will lead to undesirable consequences for that area, such as lower property values, increase in crime, or decline in the quality of schools.• Discriminate by pressuring a client or employee to violate the Law.• Express any discrimination because of any protected characteristic by any statement, publication, advertisement, application, inquiry or any Fair Housing Law record.		
YOU HAVE THE RIGHT TO FILE A COMPLAINT		
If you believe you have been the victim of housing discrimination you should file a complaint with the		
New York State Division of Human Rights (DHR). Complaints may be filed by:		
<ul style="list-style-type: none">• Downloading a complaint form from the DHR website: www.dhr.ny.gov;• Stop by a DHR office in person, or contact one of the Division's offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint. A list of office locations is available online at: https://dhr.ny.gov/contact-us, and the Fair Housing HOTLINE at (844)-862-8703.		
You may also file a complaint with the NYS Department of State, Division of Licensing Services. Complaints		
may be filed by:		
<ul style="list-style-type: none">• Downloading a complaint form from the Department of State's website https://www.dos.ny.gov/licensing/complaint_links.html• Stop by a Department's office in person, or contact one of the Department's offices, by telephone or by mail, to obtain a complaint form.• Call the Department at (518) 474-4429.		
There is no fee charged to you for these services. It is unlawful for anyone to retaliate against you for filing a complaint.		
DOS-2156 (05/20)	Page 1 of 2	

New York State Housing and Anti-Discrimination Disclosure Form

- The Anti-Discrimination Disclosure Form advises consumers of substantive provisions of the New York State Human Rights Law.
- It also sets forth how Human Rights Law complaints may be filed.
- Licensees are required to provide the Anti-Discrimination Disclosure Form to every consumer at first substantive contact.
- Applies to all property - residential, condominiums, cooperative apartments, commercial, unimproved real property, vacant land, new construction, etc. **There are no exceptions!**



How Can a Licensee Present the Anti-Discrimination Disclosure Form?

- It can be presented to the seller, landlord, prospective buyer or tenant by:
 - Email
 - Text
 - Electronic messaging system
 - Facsimile
 - Hardcopy
- An electronic communication can also contain a link to the Disclosure Form as long as it contains text informing the consumer that the link contains information regarding the New York State Human Rights Law.

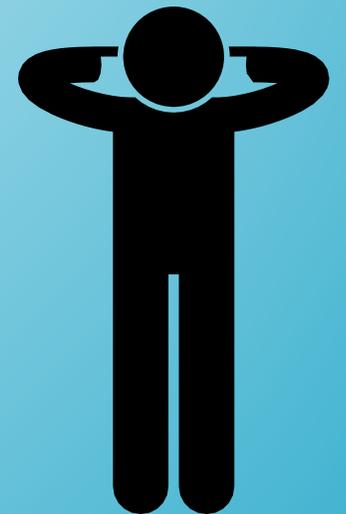
Does the Consumer Need to Sign the Anti-Discrimination Disclosure Form?

- If provided by hardcopy or electronic signature, the Licensee is required to obtain a signed acknowledgment from the seller, landlord, prospective buyer or tenant.
- If delivered by electronic means that does not permit electronic signature (text or email), then a signed Anti-Discrimination Disclosure Form is not required, but a duplicate copy must be retained and the broker must keep proof of transmission (copy of email, text, fax delivery confirmation) to prove that the Anti-Discrimination Disclosure Form was provided.
- Records must be kept for a period of not less than 3 years.



What Should a Licensee Do if a Consumer Refuses to Sign the Anti-Discrimination Disclosure Form?

- Follow the same procedure if a consumer refuses to sign the Agency Disclosure Form.
- The Licensee shall set forth under oath or affirmation a written declaration of the facts regarding when such notice was provided and shall maintain a copy of the declaration for no less than 3 years.
- Go to LIBOR's Documents on Demand page.



New York State Fair Housing Notice

Andrew M. Cuomo Governor		Division of Licensing Services	Rossana Rosado Secretary of State
A Division of the New York Department of State			
FAIR HOUSING NOTICE			
<i>Federal, State and Local Fair Housing Laws protect individuals from housing discrimination. It is unlawful to discriminate based on certain protected characteristics, which include, but are not limited to: race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, age, disability, marital status, lawful source of income or familial status.</i>			
THE FOLLOWING ARE SOME EXAMPLES OF POTENTIAL FAIR HOUSING VIOLATIONS:			
<ul style="list-style-type: none">■ Refusing to rent, sell or show a property based on a potential tenant or purchaser's protected characteristic.■ Quoting a higher price to a purchaser or renter because of the potential purchaser or tenant's protected characteristic.■ Refusing to rent to a tenant who has children or increasing a security deposit based on the number of children who will be living in the apartment.■ Steering prospective tenants or purchasers to certain neighborhoods based on any protected characteristics.■ Refusing to rent to a potential tenant because of their source of income, including but not limited to, Section 8 vouchers or other government subsidies.■ Refusing to waive a "no pet" policy for tenants that require a service, assistance or emotional support animal.■ Discriminating at the direction of a seller or landlord or because it is the preference of a seller or landlord.■ Refusing to rent to a renter who is a victim of domestic violence.			
YOU HAVE THE RIGHT TO FILE A COMPLAINT			
<ul style="list-style-type: none">■ New York State, Department of State: (518) 474-4429■ New York State, Division of Human Rights: (844) 862-8703			
ALBANY OFFICE: One Commerce Plaza, 99 Washington Avenue, P.O. Box 22001, Albany, NY 12201-2001 • Customer Service: (518) 474-4429 • Website: www.dos.ny.gov • E-Mail: licensing@dos.ny.gov			
REGIONAL OFFICES: • BINGHAMTON • BUFFALO • HAUPPAUGE • NEW YORK CITY • UTICA			
<i>This sign must be prominently posted in all real estate broker offices and at all public open houses.</i>			

New York State Fair Housing Notice Must Be Displayed at Offices

- Every real estate broker must display the Fair Housing Notice at every office and branch office operated by the broker.
- The Fair Housing Notice must be prominently displayed in the window of every office and any branch office maintained by a broker and must be visible to the public.
- If any office or branch office is not accessible from the sidewalk, or if postings are otherwise prohibited by any other applicable law, then the Fair Housing Notice must be prominently posted in the same location the business license is posted.



New York State Fair Housing Notice Must Be Displayed at All Open Houses

- A real estate broker, licensed real estate salesperson, or licensed associate broker must display the Fair Housing Notice at all **Open Houses** of all real property.
 - The Fair Housing Notice should be displayed in an area where all attendees at the open house will see it and such display should be conspicuous.
 - **Additional copies of the Fair Housing Notice must be available at Open Houses and showings to provide to consumers when requested.**
 - No downside to providing it to every consumer.



New York State Fair Housing Notice Must Be Displayed on All Websites

- All websites created and maintained by real estate brokers, associate real estate brokers, real estate salespersons and any real estate team must prominently and conspicuously display on the homepage of such website a link to the Fair Housing Notice.
- This would include websites like Facebook and Instagram if a licensee has created pages with any advertising on those platforms.
- To satisfy the requirement, the Licensee must put the link “above the fold” so a consumer does not have to scroll down the webpage to find the link.



Available Legal Resources



- LIBOR's Website (www.lirealtor.com)
 - Legal Page (www.lirealtor.com/legal) – includes weekly legal tips
 - Fair Housing Hub (www.lirealtor.com/legal/fair-housing)
- NYS Department of State (www.dos.ny.gov/licensing)
 - Fair Housing, Licensing and Advertising resources and information
- NYS Division of Human Rights (<https://dhr.ny.gov/fairhousing>)
 - YouTube videos, Events, Resources
- NYSAR (<https://www.nysar.com/legal>)
 - Updates on emerging legal issues and key information that affect everyday business
- NAR (www.nar.realtor/legal)
 - Fair Housing, Copyright, Risk Management, Federal Laws (telemarketing, CAN SPAM)



Members of the Long Island Board of REALTORS® can call the New York State Association of REALTORS® (NYSAR) at **518-43-NYSAR (518-436-9727)** with general legal questions.

The Legal Hotline is a free member benefit and is available from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays and during official NYSAR functions.