**MEMORANDUM**

TO: Boylan Code Clients

FROM: Jennifer Aronson-Jovcevski, Esq.

DATE: May 14, 2020

RE: New Notification Requirements of Fair Housing Laws for Real Estate Brokers

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Effective June 20, 2020 (after a 60-day public comment period), the new 19 NYCRR 175.28 will take effect which sets forth specific requirements for real estate brokers and any individual licensed pursuant to Article 12-A of the New York Real Property Law.

19 NYCRR 175.28(a), as amended, requires a real estate broker “…to ensure that each individual licensed pursuant to Article 12-A of the New York Real Property Law and associated with such broker provides to a prospective purchaser, tenant, seller, or landlord upon first substantive contact a disclosure notice furnished by the Department, containing substantive provisions of the New York State Human Rights Law…”

**WHO DOES THIS APPLY TO?**

Per the regulation, as amended, this requirement applies to all NY real estate brokers and any individual licensed pursuant to Article 12-A of the New York Real Property Law. New York Real Property Law section 440 defines brokers, associate real estate brokers, real estate salespersons and office managers who work under brokers. In other words, this includes real estate brokers, agents, individuals who work in a property management setting under the direction of a licensed real estate broker such as office managers, leasing agents, etc.

**WHAT IS “FIRST SUBSTANTIVE CONTACT”?**

“First substantive contact” is not defined in the new regulation, nor is it defined anywhere in Article 12-A (I checked the practice commentaries as well).  I searched caselaw, secondary sources and other statutes and unfortunately did not find much.  However, other states define “first substantive contact” as the earliest practicable opportunity during a conversation with a consumer.  This changes on a case by case basis.  In a landlord/tenant scenario, it could mean that when the property manager/broker receives an inquiry from Apartments.com then he/she need only provide the disclosure form and obtain a signature prior to obtaining any other personal information from the prospective tenant and certainly before the tenant submits an application to the landlord.

Unless and until there is further guidance from the legislature or courts on the definition, it is my opinion to err on the side of caution and provide this disclosure prior to showing any apartment.  Or, in the context of brokers or agents representing someone to buy/sell their home, the appropriate time would be to present the disclosure form at the same time they sign the Agency disclosure form.  Certainly prior to conducting an open house or showing a property.

**WHERE CAN LICENSED BROKERS OBTAIN THE REQUIRED DISCLOSURES?**

The regulation states that the disclosure notice will be furnished by the Department of State.  Since this regulation does not go into effect until June 20, 2020, I presume the notice will be furnished as we get closer to that date. Boylan Code will provide you with the notice once it is released.

**ARE THERE REQUIREMENTS REGARDING HOW BROKERS/AGENTS MUST DELIVER THE NOTICE?**

Yes. The disclosure notice must be given to prospective purchasers, tenants, sellers or landlords via email, text, electronic messaging, fax or hardcopy (no oral disclosure!). If a broker/agent delivers a copy of the disclosure via hardcopy, upon receipt, the prospective purchaser, tenant, seller or landlord must sign the disclosure confirming receipt thereof, keep a copy and give another copy to the broker/agent to retain in their records for no less than three (3) years. If the broker/agent delivers the notice via email, text, electronic messaging or fax, the broker still must retain a copy (electronic ok) for at least three (3) years.

If the prospective buyer, tenant, seller, or landlord declines to sign the disclosure notice, the real estate broker, licensed real estate salesperson or licensed associate broker 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 not less than three (3) years.

**WHAT KINDS OF PROPERTIES DOES THIS REQUIREMENT APPLY TO?**

This disclosure notice applies 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 of one or more persons regardless of the number of units and shall include: condos; co-ops; vacant land; commercial properties; unimproved real property upon which buildings are to be constructed; apartments; duplexes; and more.

**WHAT ABOUT POSTING REQUIREMENTS?**

A copy of the disclosure notice must be posted and prominently displayed in the window of the office (and any branch office) of the broker if the broker posts listings in the window and must be visible from the sidewalk. If any office or branch is not accessible from the sidewalk, then the broker must post the notice in the same location its business license is posted pursuant to NY RPL 441-a.

The broker’s website (and the website of the broker’s associates, real estate salespersons or anyone on the real estate team) must also display a link to the disclosure notice. The notice must also be displayed at open houses and showing of real property.

**FAIR HOUSING INSTRUCTION**

Lastly, every entity approved to provide instruction for fair housing and/or discrimination in the sale or rental of real property (i.e. Boylan Code’s Fair Housing Training!) shall be recorded (video and audio) and maintained for a period of no less than one (1) year or as long as otherwise may be required by law. The recording may also be subject to an audit by the Department of State.

***If you have any questions or comments about the information contained herein, please contact Jennifer Aronson-Jovcevski, Esq. at*** [***jajovcevski@boylancode.com***](mailto:jajovcevski@boylancode.com) ***or (585) 232-5300.***