



Understanding New York State's New Fair Housing Regulations



FAIR HOUSING INFORMATION HUB

LIRealtor.com/FairHousing

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

- All licensees need to be aware of these new requirements.
- Brokers are responsible to ensure that each licensed individual associated with the broker complies with the new Fair Housing regulations.

What Do the New Regulations Cover?

1. New York State Housing and Anti-Discrimination Disclosure Form.
2. New York State Fair Housing Notice.
3. Video Recording and Record Preservation of Fair Housing Real Estate Instruction.

New York State Housing and Anti-Discrimination Disclosure Form



**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) 392-3644

New York State Housing and Anti-Discrimination Disclosure Form

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.

Real estate brokers and real estate salespersons, and their employees and agents violate the Law if they:

- 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:

- 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:

- 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.

New York State Housing and Anti-Discrimination Disclosure Form

- Licensees are required to provide the New York State Housing and Anti-Discrimination Disclosure Form (Anti-Discrimination Disclosure Form) to every consumer at first substantive contact beginning on June 20, 2020.
- First substantive contact is the same standard used for presentation of the Agency Disclosure Form.
- Licensees must use the Anti-Discrimination Disclosure Form issued by DOS.
- The Anti-Discrimination Disclosure Form can be found at:
<https://www.dos.ny.gov/licensing/docs/2156.pdf>
- 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.

Must a Licensee Provide the Anti-Discrimination Disclosure Form to Current Clients and Customers on June 20, 2020 if First Substantive Contact Occurred Before June 20, 2020 Effective Date?

- DOS has stated that “License holders that have already established a ‘first substantive contact’ prior to the regulations effective date are not required to obtain a ‘late’ form”.
- However, as a Best Practice, NYSAR recommends that licensees provide the Anti-Discrimination Disclosure Form to all customers/clients.

What Types of Properties Does the Anti-Discrimination Disclosure Form Apply to?

- The Anti-Discrimination Disclosure Form applies to any type of property.
- This includes residential, condominiums, cooperative apartments, commercial, unimproved real property, vacant land, new construction, etc.
- **There are no exceptions!**
- Brokers must be sure to have the form ready to be disseminated to all prospective clients and consumers starting on June 20, 2020.

In What Manner Can a Licensee Present the Anti-Discrimination Disclosure Form?

- The Anti-Discrimination Disclosure Form can be presented to the seller, landlord, prospective buyer or tenant by:
 - Email
 - Text
 - Electronic messaging system
 - Facsimile
 - Hardcopy
- Any electronic communication can contain a link to the Anti-Discrimination Disclosure Form as long as the electronic communication contains text that informs the consumer that the link contains information regarding the New York State Human Rights Law.
- Oral disclosure **does not** satisfy the requirements.

Must the Licensee Have the Consumer Sign the Anti-Discrimination Disclosure Form?

- Yes, but only 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, then the signed Anti-Discrimination Disclosure Form is not required, but proof of electronic delivery must be kept by the broker.

Does a Licensee Need to Keep a Copy of the Anti-Discrimination Disclosure Form Provided to Consumers?

- Yes, for a period of not less than 3 years.
- If the consumer signed a hardcopy, the signed Anti-Discrimination Disclosure Form must be retained.
- If the consumer signed electronically, such electronically signed document must be retained.
- If provided by other electronic means, a duplicate copy must be retained.
- NYSAR recommends retaining proof of transmission (copy of email, text, fax delivery confirmation, or other means to prove that the Anti-Discrimination Disclosure Form was provided).

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

- The regulation provides for the same procedure if a consumer refuses to sign the Agency Disclosure Form.
- If the consumer refuses to sign the Anti-Discrimination 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
- LIBOR has created a declaration form you can use for this purpose. You can find it on Documents on Demand in the Legal Section under “Declaration that Licensee provided the NY State Housing and Anti-Discrimination Disclosure Form.”



Sworn Declaration if Consumer Declines to Sign Anti-Discrimination Disclosure Form

**SWORN DECLARATION BY REAL ESTATE LICENSEE
REQUIRED BY TITLE 19 NYCRR SECTION 175.28
IN THE EVENT CONSUMER DECLINES TO SIGN NEW YORK STATE
HOUSING ANTI-DISCRIMINATION DISCLOSURE FORM**

STATE OF NEW YORK)
) SS.:
COUNTY OF)

_____ (name) affirming under the penalty of perjury, deposes and says:

- 1) I am a real estate broker / associate real estate broker / real estate salesperson affiliated with _____ (name of brokerage). I make this statement in compliance with Title 19 NYCRR Section 175.28.
- 2) On _____, 20___, I presented to _____ (name of prospective buyer(s)/tenant(s)/seller(s)/landlord(s)) the New York State Housing and Anti-Discrimination Disclosure Form required under Title 19 NYCRR Section 175.28. The actual form presented is attached to this statement.
- 3) Although I indicated to the prospective buyer(s)/tenant(s)/seller(s)/landlord(s) that New York State Law required that I request that prospective buyer(s)/tenant(s)/seller(s)/landlord(s) sign the New York State Housing and Anti-Discrimination Disclosure Form, prospective buyer(s)/tenant(s)/seller(s)/landlord(s) refused to sign the New York State Housing and Anti-Discrimination Disclosure Form when presented.

_____ Signature of Licensee

_____ Date

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

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.

THE FOLLOWING ARE SOME EXAMPLES OF POTENTIAL FAIR HOUSING VIOLATIONS:

- 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

- 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:

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*This sign must be prominently posted in all real estate broker offices
and at all public open houses.*

New York State Fair Housing Notice

- The new Fair Housing Regulations require every real estate broker to display the Fair Housing Notice at every office and branch office operated by the broker.
- Brokers must use the Fair Housing Notice issued by DOS.
- The Fair Housing Notice is different from the NY State Housing and Anti-Discrimination Disclosure Form.
- The requirements to comply with the Fair Housing Notice are different from the requirements to comply with the Anti-Discrimination Disclosure Form.
- You can find the Fair Housing Notice at:
https://www.dos.ny.gov/licensing/docs/FairHousingNotice_new.pdf

What Are the Requirements to Comply with the Fair Housing Notice?

- As stated before, 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 such office and any branch office maintained by the broker if such broker also provides listings or other postings in the window of such location and must be visible to persons on that portion of the sidewalk adjacent to such office or branch office.
- 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.

Must a Licensee Display the Fair Housing Notice Anywhere Else?

- Yes, 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 should be available at Open Houses to provide to consumers when requested.
- In addition, all **websites** of the broker and the broker's affiliated licensees must contain the FH Notice.

How Must a Licensee Display the Fair Housing Notice on its Website?

- 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 provided by the DOS.
- This would include websites like Facebook and Instagram if a licensee has created pages with any advertising on those platforms.
- To satisfy the requirement of prominently and conspicuously displaying link, the Licensee must put the link “above the fold” so a consumer does not have to scroll down the webpage to find the link.
- Again, the link that must be provided is:
https://www.dos.ny.gov/licensing/docs/FairHousingNotice_new.pdf

Does a Licensee Need to Provide the Fair Housing Notice to Consumers?

- Licensees are not required to provide the Fair Housing Notice to consumers like they are required to provide the Anti-Discrimination Disclosure Form to consumers.
- However, the new regulation requires that licensees conducting an open house or showing must have the Fair Housing Notice available and provide a copy if requested by the consumer.
- So licensees must have copies ready for distribution out in the field as of June 20, 2020.

Video Recording and Record Preservation Required for Fair Housing Real Estate Instruction

- The new regulations also include a requirement that all entities providing courses approved by the Department of State must record courses “...pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property...in its entirety.”
- The entity providing the course must record both video and audio.
- The recording must be maintained for at least one (1) year after the course was provided to a student.
- The recording is subject to any audit of the Department of State.

Local and State Fair Housing Agencies

- New York State Division of Human Rights
<https://dhr.ny.gov>
- New York State Attorney General - Fair Housing Laws
<https://ag.ny.gov/civil-rights/fair-housing>
- Suffolk County Human Rights Commission - Human Rights Law
<https://suffolkcountyny.gov/departments/human-rights-commission/human-rights-law>
- Nassau County Human Rights Commission - Human Rights Law
<https://www.nassaucountyny.gov/420/Human-Rights-Laws>
- Fair Housing NYC
<https://www1.nyc.gov/site/fairhousing/index.page>



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.