

2 New York Real Estate License Law | Module Review

Module Outline

This module is divided into six units and a module quiz:

Unit 1: Overview of New York Real Estate Law
Unit 2: New York Real Estate Licensure
Unit 3: Getting and Keeping a Real Estate License
Unit 4: New York Real Estate Office
Unit 5: Broker Advertising
Unit 6: Violating License Law

Module Objectives

By the end of this module, you will be able to:

- Indicate the purpose of real estate licensing.
- Identify the sources of New York licensing law.
- Describe the authority of New York regulatory agencies.
- Identify activities that require a real estate license.
- Identify people who are exempt from needing a real estate license.
- Describe the difference between an individual license and a registration that is issued to a non-living entity.
- Identify requirements for getting each of the different categories of New York real estate licenses.
- Identify requirements for keeping a New York real estate license.
- Identify requirements for operating a real estate office in New York.
- Describe a broker's responsibilities related to affiliated licensees.
- Identify laws related to general business practice.
- Identify a firm's obligations related to advertising.
- Describe consequences of violating New York real estate law.

Unit 1: New York Real Estate Law Overview

License Law

- The purpose of license laws is to *protect the public by ensuring a consistent level of competence, ethics, and professionalism*.
- New York license law is found in Article 12-A, Real Property Law, Licensing of Real Estate Brokers and Real Estate Salespersons of the New York Administrative Code.
- In New York, the state agency that actually issues state licenses to qualified applicants is the **Department of State (DOS)**.

Secretary of State

The Secretary of State is responsible for the administration of licensing, examination, education, and compliance provisions of Article 12-A, the rules of the Board, and the rules of the Secretary of State. The Secretary has specific authority to adopt rules and regulations pertaining to the following matters:

- Commingling money of a principal
- Rendering of accounts to clients
- Managing property for a client
- Broker's purchase of property listed with the broker
- Inducing breach of contract of sale or lease
- Records to be maintained by licensees
- Handling of clients' funds
- Non-solicitation orders and cease-and-desist orders
- Administration and enforcement of the provisions of Article 12-A and the rules established under it

The Secretary also has the authority to:

- Enforce the provisions of Article 12-A upon complaint by any person or upon the secretary's own initiative
- Investigate any violation
- Investigate the business, business practices, and business methods of any person applying for or holding a license as a real estate broker or salesperson
- Approve or deny license applications and renewals
- Suspend or revoke a license or impose a fine or reprimand, for violations of Article 12-A

New York State Board of Real Estate

The New York State Board of Real Estate oversees **all activities** in New York that would require a real estate license. The Board is responsible for:

- Setting rules and regulations that impact brokers and salespeople.
- Administering and enforcing Article 12-A.
- Deciding content for courses of study and advising the Secretary of State on exam administration.
- Establishing rules and regulations on continuing education.
- Making recommendations regarding legislation.
- Filing an annual report to the assembly and judiciary committees that contains the types of complaints received, the status of cases, and length of time from complaint to final disposition.

New York State Board of Real Estate Membership

The Board membership includes:

- Secretary of State
- Executive Director of the Consumer Protection Board
- 13 members appointed as follows:
 - The **Governor** appoints **7** members: 3 brokers and 4 members of the public
 - The **State Majority Leader** appoints **2** members: 1 broker and 1 member of the public
 - The **Speaker of the Assembly** appoints **2** members: 1 broker and 1 member of the public
 - The **Senate and Assembly Minority Leaders** each appoint one member, which could be either a real estate broker or a member of the public

New York State Board of Real Estate Meetings

The Board is required by law to meet at least **three times a year** and may be required to meet additionally if called by the Secretary of State or a majority of the board. In addition to regularly scheduled meetings, the Board is required to hold at least **one public hearing each year** in these cities:

- Albany
- Buffalo
- New York City

Categories of New York Real Estate Licenses

- Broker
- Associate broker
- Salesperson

Note:

A licensed associate real estate broker may elect to work as an **office manager** under the name and supervision of another individual broker.

Non-Resident Applicants

Non-resident applicants must:

- Conform to all the requirements as a resident applicant.
- File an **irrevocable consent** submitting himself to the jurisdiction of the New York State courts.

Reciprocity

Reciprocity allows a license in one jurisdiction to be valid in another jurisdiction. All applicants for a reciprocal license must:

- Have **current** certification, dated within six months, from the Real Estate Commission in the state with a reciprocal agreement with New York.
- Be sponsored by their home-state broker who must hold a current New York State broker's license.
- Submit a completed application.
- Submit an irrevocable consent form.
- Pay the appropriate fee.

State Licensing Examination

In order to schedule the salesperson or broker exam, applicants must register online using New York State's eAccessNY system. You can set up your **eAccessNY** user account from the Real Estate Professionals page of the Division of Licensing Services website.

Unit 2: New York Real Estate Licensure

Activities Requiring Licensure

In New York, it is illegal to **act in real estate on behalf of another for a fee or valuable consideration** without first being licensed or registered (unless specifically exempted). According to the New York law, these activities require a broker's license:

- Lists property for sale.
- Negotiates the sale of real property or an interest in real property, at auction or otherwise (including condominiums and cooperatives).
- Negotiates the exchange of real property.
- Sells or negotiates the sale of lots or parcels of real estate.
- Negotiates a lease for the rental of real property.
- Negotiates a loan that is to be secured by a mortgage (also requires registration as a mortgage broker if for one- to four-family residences).
- Relocates a commercial or residential tenant.
- Collects rent for more than one client.
- Selling a business that has more than half its value in real estate.

Note:

Even *attempting* to perform these activities, whether successful or not, without a license is a violation.

Exemptions from Needing a License

The following categories of individuals and entities are excluded from needing a real estate license in New York State:

- An owner of real estate selling his or her own property
- An attorney-at-law who receives a fee from his client for rendering services within the scope of the attorney-client relationship and does not hold himself out as a real estate broker
- A trustee in bankruptcy, administrator, executor, trustee, or guardian who is acting under authority of a court order, will, or trust instrument
- An employee of a **single** owner, company, or entity who manages or maintains the property and otherwise acts on the owner's behalf
- **Public officers** acting in the ordinary course of their official capacity

In addition to the state exemptions, New York City also exempts **tenant associations** and **not-for-profit corporations** responsible for enforcing housing maintenance codes to manage residential property owned or managed by the City.

Unit 3: Getting and Keeping a Real Estate License

Broker Licenses

- Individual Broker (Class 35)
- Associate Broker (Class 30)
- Trade Name Broker (Class 37)
- Partnership Broker (Class 33)
- Corporate Broker (Class 31)
- Limited Liability Company (LLC) or Partnership (LLP) (Class 49)

Broker / Associate Broker

A broker is licensed to represent buyers, sellers, landlords, or tenants within the State of New York with no restrictions on the type of real estate involved or the brokerage activities. A broker may:

- Be an individual or a legal entity such as a corporation, partnership, or association.
- Manage real estate.
- Supervise and direct a real estate office.
- Employ other licensees.
- Be multi-licensed (on the “office level”).

An associate broker has met the requirements to be a broker but chooses to work under the name and supervision of another broker. An associate broker may also serve as an office manager for a real estate office.

Note:

A broker has **vicarious liability** for his or her affiliated licensees.

Individual Broker / Associate Broker Requirements

Individual broker applicants must:

- Be at least **20** years old.
- Successfully complete **45** hours of approved real estate education. Note that this requirement is over and above the 75 hours of pre-licensing education required for a salesperson's license.
- Have **two** years of full-time experience as a licensed real estate salesperson working under a licensed real estate broker.
- Be a U.S. citizen or lawfully admitted alien with permanent residency in the U.S.
- Not have been convicted of a felony (though there are some exceptions, for example if the applicant has received a pardon, for example).
- Be in compliance with child support laws as outlined in 3-503 General Obligation Law.
- Be honest and trustworthy.
- Provide documentation of experience in real estate.
- Pass the state broker's license examination.
- Complete the license application and pay the appropriate fees.

Real Estate Salesperson

A real estate salesperson is an individual who is licensed to engage in real estate brokerage activities on behalf of his or her employing broker with no restrictions (unless imposed by the employing broker). A real estate salesperson may **not**:

- Employ other licensees.
- Be multi-licensed.
- Manage property.
- Receive compensation from anyone other than the employing broker.

A real estate salesperson can provide appraisal assistance to a Certified Broker Appraiser, much like an apprentice, if the Broker Appraiser:

- Directly supervises and controls the salesperson's work.
- Assumes total responsibility for the contents of the appraisal documents and value conclusions.
- Personally inspects the interior and the exterior of the subject property.

Real Estate Salesperson Requirements

Salesperson applicants must:

- Be at least **18** years old.
- Show successful completion of 75 hours of approved real estate education (or apply for a waiver for comparable college-level education).
- Be in compliance with child support laws as outlined in 3-503 General Obligation Law.
- Not have been convicted of a felony (though there are some exceptions, for example if the applicant has received a pardon, for example).
- Pass the state-sponsored real estate **salesperson** examination.
- Complete the license application, which includes questions to determine trustworthiness of individual and sponsoring broker's name and signature.

Display of Licenses and Pocket Cards

- A broker is required by law to **display his broker's license in a prominent location** at his or her real estate office.
- The Department of State, in cooperation with the Department of Motor Vehicles, prepares, issues, and delivers **pocket cards** to licensees. A pocket card includes:
 - The licensee's name
 - A photo ID
 - The business address of the licensee
 - The name and address of the affiliated broker (for salespersons and associate brokers)
- Pocket cards are to be carried by the licensee and must be shown on demand when practicing real estate.

Renewal Cycles and CE Requirements

- New York renews all real estate licenses on a staggered two-year license renewal cycle.
- Real estate broker, associate broker, and salesperson licensees are required to complete **22.5 hours of continuing education** during every license renewal cycle except for:
 - **Attorneys** who hold a license and are admitted to the New York State bar.
 - Brokers with more than **15 years** of consecutive licensure **before July 2008** and who are actively engaged in the real estate business.

License Transfer

- The broker the salesperson is leaving is required to file a **termination of association notice** with the Department of State and pay a small termination fee.
- The new sponsoring broker must file a new **record of association** with the Department of State and also pay a small fee. The salesperson's license can then be endorsed over to the new sponsoring broker.

Unit 4: Real Estate Office and General Practices

Broker Offices

Each broker must maintain a definite, fixed place of business anywhere within the State of New York. The office must include:

- Signage
- Privacy
- Supplemental license (if a branch office)

Broker Supervision

New York law states that every real estate office – main offices and branch offices – must be under the direction and supervision of a broker, or in the case of a branch office, an office manager.

According to New York State law, broker supervision of a licensee would include:

- Guidance,
- Oversight,
- Management,
- Orientation, and
- Instruction.

Broker Responsibility

- The broker has **vicarious liability** for affiliated salespersons and associated brokers.
- A broker cannot write a contract with a licensee that diminishes supervisory obligations.

General Business Practices

- **Compensation** – The salesperson receives the agreed upon share of the commission from his or her sponsoring broker and only from them. To receive compensation, a salesperson must be duly licensed at the time of the transaction. RESPA prohibits licensees from accepting compensation from service companies involved in a transaction – **kickbacks**.
- **Disclosure of interest** – A licensee must **disclose any interest** he may have in the property.
- **Handling funds** – Once earnest money has been presented, it **must** be placed into an **escrow account** to protect the interests of all parties as promptly as is practical. Commingling of funds is strictly prohibited.
- Agreements related to sale or lease transactions must be in writing, and each party should receive a duplicate. Copies of all contracts and records should be retained for at least **three years** after the consummation of the transaction.

Unit 5: Broker Advertising

Broker Advertising

- All advertisements to buy, sell, exchange, rent, lease, or mortgage real estate must include the **business name** of the broker **exactly as it appears on the license**. The telephone number associated with the brokerage must also be given.
- Blind ads, ads that do not include the broker's name, are illegal in NYS.

Licensee Advertising

- An associate broker or salesperson may not advertise real estate for which they have listings in their own names.
- The broker's name cannot be smaller than the name of the broker. This is waived when a licensee is advertising their own property for sale or lease in their own name, however, they must disclose their license status.

Untruthful or Misleading Information

- Any advertisement for property that is placed by a licensed real estate professional should be truthful and should not mislead a potential customer in an attempt to lure them into looking at a property.
- A broker may not use a trademarked or copyrighted term or symbol in the ad without authorization.

Authority

- **Actual** authority is power or permission given intentionally to an agent by the principal.
- **Express** authority is power or permission for a specific act or outcome communicated by the principal to the agent.
- **Implied** (or incidental) authority is the authority to do everything reasonably necessary to carry out the principal's express orders.

Permission to Advertise

State law says that you may **not** place a sign on any property without the **express consent** of the owner of the property.

No Contests or Lotteries

Licensed brokers in New York **cannot** promote or sell real estate through any plan or scheme involving any game of chance or gambling device, such as a lottery, contest, prize, or drawing.

No Discriminatory Advertising

Federal law prohibits discriminatory advertising – ads based on race, creed, color, national origin, age, sex, disability, familial, or marital status.

Unit 6: Violating New York License Law

Practicing Without a License

The Department of State has the authority to investigate and prosecute for **unauthorized** practice of real estate. The DOS may impose the following fines:

- First offense – not exceeding \$150
- Second offense – not exceeding \$500
- Third and subsequent offense – not exceeding \$1,000

Violations of the Rules and Regulations

<ul style="list-style-type: none">• Misstating information on an application• Making any misrepresentation to conceal a material fact, whether done intentionally, maliciously, or carelessly• Committing fraud or making fraudulent statements• Demonstrating untrustworthiness or incompetency• Failing to complete CE• Offering a property for sale or lease without the owner's consent• Inducing a party to break an existing sales contract in order to contract with another principal• Placing a sign on a property without the owner's consent• Failing to immediately provide a duplicate original of any instrument to parties involved in a real estate transaction• Failing to keep adequate records• Accepting services of another broker's employee without the broker's knowledge• Failing to disclose an interest in a property to a buyer or seller• Failing to present New York-mandated property disclosures• Failing to advise potential buyers and sellers of the rights and obligations of the agency relationship• Buying property he has listed for a client, without clearly informing the client	<ul style="list-style-type: none">• Attempting to negotiate the sale, exchange, or lease of property already under an exclusive listing• Establishing an exclusive listing agreement with an automatic renewal• Failing to provide a list of Multiple Listing Service participants, if a member of an MLS• Entering into a net listing agreement• Violating the Human Rights Law of New York or the federal Fair Housing Act• Soliciting the sale, lease, or listing of a property in a cease-and-desist zone• Failing to comply with New York State child support regulations• Practicing law without a license• Receiving compensation from more than one party in a transaction, without the other's consent• Commingling money of principal• Splitting commissions• Paying kickbacks• Failing to remit funds held for a client• Receiving or demanding compensation from any person other than the broker for work done in the appraising, buying, selling, exchanging, leasing, renting, or negotiating of a real estate loan• When acting as tenant relocater, interrupting or discontinuing essential building services that interfere with the peace comfort, repose, and the quiet enjoyment of a tenant
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Breach of Duty

When a real estate agent breaches a duty to the principal or to a third party, consequences may include:

- Action by the DOS,
- Disciplinary action by professional associations,
- The filing of criminal charges by the State Attorney General against the agent in very serious cases, and
- The filing of a civil suit by a party claiming harm.

DOS Penalties

The Department of State will investigate every complaint against a licensee. If there's evidence of a violation of the Acts set forth in Article 12-A, the Department of State will hear the case, and impose penalties on those found to be in violation, which may include:

- Refusal to issue a license or to renew a license
- A reprimand
- License suspension (license is withdrawn for a specified period of time and may call for the performance of a condition prior to reactivation)
- License revocation (license is withdrawn and licensee is eligible to apply to the DOS for reinstatement at end of the **one year**; reinstatement is entirely at the discretion of the DOS, and its reinstatement may come with specific terms)
- A fine of up to **\$1,000** per offense

Before the Department of State revokes, suspends, or fines a licensee, it must notify the licensee *in writing* of the charges at least **10 days prior** to the date set for the hearing before an administrative law judge. This allows the licensee to retain counsel. If the licensee is a salesperson, the broker is also notified of the charges.

Note:

Licensees have the right to appeal any penalties to the Supreme Court of New York State through an Article 78 procedure.

Criminal Penalties

License law violations are considered to be **misdemeanors**, which may be punishable by:

- A fine of up to \$1,000 and/or
- Imprisonment of up to one year.

Civil Lawsuits

Clients or customers may sue for breach of duty. A licensee found liable for breach of duty may have to pay:

- Compensatory damages
- Restitution
- Punitive damages

Terminology Review

Administrator

The person appointed by the court to handle the estate of someone who died without a will, with a will but no nominated executor, or the executor named in the will has died, has been removed from the case or does not desire to serve. Sometimes called a personal representative.

Affiliated Licensee

Individuals licensed as salespersons or associate brokers who work in the brokerage of a sponsoring broker.

Apartment Information Vendor

Someone who, for a fee, furnishes information concerning the location and availability of residential rental property.

Apartment Sharing Agent

Someone who, for a fee, coordinates with a customer and the current owner or occupant of legally occupied real property who wishes to share that housing.

ARELLO

The Association of Real Estate License Law Officials promotes uniform standards and policies related to real estate licensure and education throughout North America.

Associate Broker

A licensed broker who works for another broker.

Authority, Actual

Authority given intentionally by the principal to an agent.

Authority, Express

Authority expressly communicated, in words or in writing, by the principal to the agent.

Authority, Implied

Authority indirectly given to an agent to do everything reasonably necessary to carry out the principal's express orders.

Blind Ad

An ad placed by a real estate licensee that does not include the appropriate broker identification, often placed in order to give the illusion that property is for sale by owner.

Board

The State Board of Real Estate is responsible for carrying out the requirements set forth in New York's real estate licensing law.

Branch Office

A physical location separate from a broker's main office that is used by firm's licensees to meet or consult with clients or customers on a regular basis.

Broker

One who is licensed to represent one of the parties in a real estate transaction for compensation.

New York Real Estate Sales

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Brokerage

A broker's business.

Cease and Desist Order

Court order requiring certain activities be stopped.

Civil Penalties

Monetary relief, in the form of fines or surcharges, against an individual as restitution for wrongdoing by the individual.

Commingling

Illegally mixing money held in trust on behalf of a client with personal funds.

Continuing Education

Specific hours of training or education required in order to renew a real estate license.

Conversion

Misappropriation of property or funds belonging to another.

Corporation

A legal structure authorized by state law that allows a business to organize as a separate legal entity from its owners for liability or tax purposes. Also known as a **Legal Person**.

Criminal Litigation

A lawsuit in which the government sues someone to punish the wrongdoer and protect society.

Damages, Compensatory

Damages award, usually money, intended to compensate the plaintiff for harm caused by the defendant's act or failure to act, including personal injuries (physical and mental), property damage, and financial losses.

Damages, Punitive

Damages award that is added to compensatory damages, to punish the defendant for malicious or outrageous conduct and discourage others from engaging in similar acts.

Department

The Department of State is the New York state agency that issues state licenses to qualified applicants and oversees the State Board of Real Estate.

Deposit

1. Money offered as an indication of good faith regarding future performance of a purchase agreement. Also called **earnest money**. 2. A tenant's security deposit.

Dual Licensure

When a licensee is associated with more than one broker.

Escrow

The system in which things of value (e.g., money or documents) are held on behalf of the parties to a transaction by a disinterested third party (called an escrow agent), until the specified conditions have all been complied with.

Escrow Account

Account in which the lender maintains the borrower's extra 1/12, monthly deposits to cover next year's insurance and tax payments. Also called **Reserve Account**.

Executor

The person named in a will to handle the property of someone who has died and carry out the terms of the will. If female, may be called an executrix.

Fiduciary

Person in a position of trust, held by law to high standards of good faith and loyalty.

Fiduciary Relationship

A relationship of trust and confidence, in which one party owes the other (or both parties owe each other) loyalty and a higher standard of good faith than is owed to third parties. For example, an agent is a fiduciary in relation to the principal.

Fraud

An intentional misrepresentation or concealment of a material fact; when a person actively conceals material information, or makes statements that he or she knows are false or misleading.

FSBO (For Sale By Owner)

An attempt to sell one's own property without listing it with a real estate broker.

General Partnership

A partnership in which each member has an equal right to manage the business and share in the profits, as well as an equal responsibility for the partnership's debts.

Irrevocable Consent

Submission of an out-of-state agent to the jurisdiction of the state courts in which the agent agrees to allow summons, subpoenas, or other processes to be served against him.

Kickbacks

Fees or other compensation given for services not performed, but as a means of undisclosed commission for business referrals. (These are prohibited by RESPA.)

Limited Liability Company (LLC)

A business ownership structure that offers its owners the advantage of limited liability (like corporations) and partnership-like taxation, in which profits are passed through to the owners and taxed on their personal income tax returns.

Misdemeanor

A crime, less serious than a felony, punishable by no more than one year in jail.

Mortgage Banker

Originators of loans in the primary market.

Mortgage Broker

Individuals or companies that, for a fee, bring borrowers and lenders together for the origination of a loan.

Multiple Listing Service (MLS)

A listing service whereby local member brokers agree to share listings, and agree to share commissions on properties sold jointly.

Office Manager

A licensed associate real estate broker who elects to work as an office manager under the name and supervision of another broker in order to supervise a branch office.

Pocket Card

A wallet-sized real estate licensee identification that serves as a portable proof of licensure, and which must be carried whenever a licensee is engaging in the practice of real estate.

Puffing

Superlative statements about the quality of a property that should not be considered assertions of fact. "The best buy in town" or "a fabulous location" are examples of puffing.

REALTOR®

Any real estate licensee who is a member of the National Association of REALTORS® (NAR) and his or her affiliated state and local association. Only members may use the term REALTOR® as it's a registered trademark of the NAR.

Receiver

A neutral person appointed by a judge to take charge of the property and business of one of the parties to a lawsuit and receive his/her rents and profits while the right to the monies has not been finally decided or to receive rents and profits coming to a debtor either while a bankruptcy is being processed or while an arrangement is being worked out to pay creditors.

Reciprocity

A mutual exchange of privileges, such as recognizing a license issued in one jurisdiction in another jurisdiction.

Restitution

A requirement that a licensee return any money that was taken or used improperly to the injured party.

Revocation

The permanent withdrawal of a licensee's license.

Salesperson

Any licensed agent associated with a broker, and as such may perform most of the acts a broker can on behalf of the broker.

Sole Proprietorship

A business owned and managed by one person (or for tax purposes, a husband and wife). For IRS purposes, a sole proprietor and his or her business are one tax entity, meaning that business profits are reported and taxed on the owner's personal tax return. With a sole proprietorship, the owner is personally liable for all business debts.

Sponsoring Broker

The principal broker in a real estate brokerage who oversees the affiliated licensees.

Suspension

A real estate agent's license being temporarily withdrawn for a specified period of time.

Tenant Relocator

Someone who, for another and for a fee, commission or other valuable consideration, supervises, organizes, arranges, coordinates, handles, or is otherwise in charge of or responsible for relocating commercial or residential tenants from buildings or structures that are to be demolished, rehabilitated, remodeled, or otherwise structurally altered.

Termination of Association Notice

A notice filed with the Department of State indicating that a licensee is ending his or her association with a sponsoring broker.

Vicarious Liability

When one person bears the responsibility for the actions of another, such as a licensed broker's vicarious liability for his or her agents.