

Legal Notes



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Legal Oversight of Real Estate Professionals

By Rita G. Rich, J.D.
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This article is a general overview of New York's laws and rules with regard to the State's oversight of real estate brokers and salespersons.

New York State licenses and governs real estate brokers and salespersons under NYS Real Property Law (*Articles 8, 9, 12-A and 14 and New York Codes, Rules and Regulations; Title 19 NYCRR*).

Under Real Estate License Law, “**real estate broker**” means individuals, as well as agencies working in a broad range of real estate business activities for a fee or commission. The profession includes negotiating purchases, sales, exchanges, and rentals of real estate, both residential and commercial. A real estate broker may also be a tenant relocater responsible for the relocation of commercial or residential tenants from buildings that are to be demolished or remodeled.

An “**associate real estate broker**” works under the business name and supervision of a real estate broker.

A “**real estate salesperson**” is an agent of a real estate broker. His or her listings are accepted by the broker agency.

To safeguard the interests of the public, all three denominations require a license, and of course, there are license fees. In order to obtain a license, qualifying courses in real estate are mandated, as well as final examinations administered by the Department of State. Fees are applicable. Brokers must also meet extensive experience qualifications. The law reads, “The Department of State, if satisfied of the competency and trustworthiness of the applicant, shall issue and deliver to him a license...” The license must be conspicuously displayed in the principal place of business at all times, and a photo ID card issued by the State must be carried and shown on demand.

Under Real Property Law, subject to Court review, real estate licensees may be reprimanded or fined up to \$1,000. Licenses may be suspended or revoked for a number of reasons, including the following:

- Fraud or fraudulent practices
- Dishonest or misleading advertising
- Untrustworthiness
- Incompetency
- Failure to comply with a summons, subpoena, or warrant relating to a paternity or child support proceeding (notice and hearing provisions apply)
- Arrears in payment of child support, or combined child and spousal support (requires notice and a hearing on whether arrears were paid)
- Splitting commissions with anyone other than an associated licensed real estate salesperson or a licensed broker

Violators may be found guilty of a misdemeanor.

New York's regulations affecting brokers and salespersons include the following:

- A broker may not commingle money of the principal with his/its own funds.
- A broker may not directly or indirectly buy for himself property or an interest in property listed with him unless fully disclosed to the listing owner.
- A broker may not negotiate with an owner who has an existing written exclusive contract with another broker.
- A broker must have the consent of the owner to place a sign on the owner's property.
- A broker must not be a party to an exclusive listing contract which contains an automatic continuation beyond the listing termination date in the contract.

Clearly, real estate brokers and salespersons are subject to broad preconditions of licensing, and are held to high standards.

They have a fiduciary relationship with their clients, creating a duty to act primarily for the client's benefit.

Related topics in future articles of this newsletter will include disclosure obligations pertaining to residential transactions, vacant land deals, and lands in agricultural districts.

Glossary

Real estate broker: individuals, as well as agencies working in a broad range of real estate business activities for a fee or commission

Associate real estate broker: works under the business name and supervision of a real estate broker

Real estate salesperson: an agent of a real estate broker



Reducing Your Property Taxes: The Tax Certiorari Proceeding



By Diana Puglisi, J.D.
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“**Tax Certiorari**” is the legal process by which courts review a real property’s tax assessment. Essentially it is a battle over the value of real property versus the equity in the assessment as compared with other taxpayers. A Tax Certiorari proceeding generally encompasses the entire assessment review process, from the filing of a grievance complaint with the local Board of Assessment Review (“BAR”), through judicial review of the assessment.

Any person who pays property taxes can grieve an assessment, including property owners and tenants who are required to pay property taxes pursuant to a written agreement. Only the assessment on the current tentative assessment roll can be grieved.

A taxpayer has four grounds on which to challenge a tax assessment:

- (1) **Excessive assessment:** The property’s assessment is greater than the current full market value of the property.
- (2) **Unequal assessment:** The property is assessed at a higher percentage of the full market value than all other comparable properties on the assessment roll in the area.
- (3) **Unlawful assessment:** Property is tax exempt, located outside the tax boundaries, etc.
- (4) **Misclassified assessment:** Property is not properly classified for its actual use.

By filing a grievance, you are asking the assessor to reduce the assessed value of your property, thereby seeking to lower your property taxes. If the assessor does not agree to reduce the assessment outright, you have the right to attend a hearing of the BAR, where you need to prove to the satisfaction of the BAR that your property is currently over-assessed. The best support for such an assertion is a recently obtained property appraisal. The appraisal must contain a statement of the method used by the appraiser to derive his or her appraisal. It must contain a clear and concise statement asserting the relationship between your property and comparables used by the appraiser in determining your property’s value, and must include photographs of the property. An appraisal is considered expert testimony. The BAR’s decision must contain a reason for its determination.

In most New York municipalities, March 1st is the deadline for tax exemption applications, as this date is used by the assessor to determine the value of the property for the upcoming tax roll. The tentative tax roll is filed May 1st. “Grievance Day” is typically held at the end of May, with the final tax roll being filed July 1st.

If the final tax roll is filed and the grievance is unsuccessful, you may seek judicial review through either a Small Claims Assessment Review (“SCAR”) or an Article 7 Real Property Tax Law proceeding, commenced by filing a Notice of Petition and Petition in the County Clerk’s Office.

The burden to prove that the assessment is incorrect falls with the taxpayer.

Generally, the taxpayer needs to present “substantial evidence” to rebut the presumed validity of the assessment. All filings are time-sensitive, so missing a deadline will mean that you will have to wait until next year to file a new grievance.

Glossary

Tax Certiorari: the legal process by which courts review a real property’s tax assessment

Zoning Regulations: The Special Use Permit



By Jay R. Myrow, J.D.
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Zoning ordinances are the tool by which local governments provide for the orderly development of lands within the municipality. The typical ordinance creates various districts that permit specified types of development within the district boundary. Examples of such districts are: Residential, Commercial, Agricultural, Industrial, Central Business, Rural, Mountain, Senior, and Traditional Neighborhood. The types and number of districts created is dictated by the particular nature of each municipality.

The types of uses permitted in each zoning district are specified in the use regulations set forth in the zoning ordinance. The use regulations will list "**permitted uses**" that are allowed on properties within the district as of right. It will also list "**permitted accessory uses**" that are allowed as complimentary uses to permitted uses in a zone. For instance, a "residential district" may allow single-family dwellings as a permitted use, and detached garages or customary home occupations as accessory uses for the dwelling.

Permitted and accessory uses typically may be developed simply by showing that the structures containing the uses will properly fit the proposed lot. These uses are typically straight

forward and do not pose complicated development issues. However, there are uses of property where particular factors need to be considered in determining whether their development is appropriate to a particular property.

In those circumstances, zoning regulations are adopted that provide for the issuance of "**Special Use Permits**". Such regulations specify particular conditions relating to specific uses that may be granted a permit. For instance, special use regulations may set outdoor storage limitations, lighting requirements, required distances from churches, schools, and residences, parking requirements, or drive-thru restrictions and seating capacities for restaurants.

Municipalities can authorize either the planning board or the elected governing board to issue Special Use Permits. Since most special uses will also require a site plan,

the planning board is more commonly authorized to issue the Special Use Permit, as it can simultaneously consider the site plan application.

Where a town or village board is authorized to issue the Special Use Permit, separate applications are made for the permit and the site plan. The zoning law will provide for the coordination of the approvals between a town or village board and the planning board.

Special Use Permits may be made renewable on a periodic basis. In such cases, the applicant is required to show that the conditions of use set forth in the permit are being complied with. If the conditions are adhered to, the permit must be renewed. If the conditions are violated, the applicant is given a short period of time to cure the violations. If they remain uncured, the renewal of the permit may be denied.

If you are seeking to use your property for a use requiring a Special Use Permit, be sure to check the zoning ordinance for the additional requirements for that particular use.

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Glossary

Zoning ordinances: the tools by which local governments provide for the orderly development of lands within the municipality

Permitted uses: allowed on properties within the district as of right

Permitted accessory uses: allowed as complimentary uses to permitted uses in a zone

Special Use Permits: specify particular conditions relating to specific uses that may be granted a permit