

**Legal Alert: Department of State Issues "Guidance" on Brokers Fees**

**February 6, 2020**

On January 31, 2020, the NYS Department of State issued an informational notice, "Guidance for Real Estate Professionals Concerning the Statewide Housing Security & Tenant Protection Act of 2019 and the Housing Stability and Tenant Protection Act of 2019." Their interpretation of the law was issued in order to "advise" real estate professionals of how the Housing Stability and Tenant Protection Act of 2019 applies to them.

Pursuant to this guide, a broker who is a landlord's agent cannot collect a fee from a prospective tenant for bringing about the "meeting of the minds" between the landlord and tenant (i.e., the broker fee), or the broker will be subject to discipline. The Department of State advises that this interpretation is supported by the amendment to the Real Property Law § 238-a(1)(a) which provides, in pertinent part, "no landlord, lessor, sub-lessor or grantor may demand any payment, fee, or charge for the processing, review or acceptance of an application, or demand any other payment, fee or charge before or at the beginning of the tenancy, except background checks and credit checks...".

The State's interpretation of the law takes the position that any broker that is retained by the landlord to list and rent an apartment is an agent for the landlord, and thus, is precluded from collecting a fee from the tenant. The broker may collect a fee to be paid by the landlord.

Notably, the discipline of a broker that violates this, may include the return of the commission plus a fine and possible suspension/revocation of their license.

It appears that if a prospective tenant independently hires their own broker, that broker may be permitted to collect a fee from the tenant, as the broker would not be considered an agent of the landlord.

While we do not agree with the State's position, we do not believe it is advisable to ignore it at this time.

We will provide further updates as additional information on this issue becomes available.

If you have any questions, please contact us.