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New York: broker's license may be required for property managers

By Erin M. Kansy

Property managers in New York may need to obtain a real estate broker's license or risk being forced to pay penalties or forego their management fees.

Performing real estate broker functions requires a broker's license

Property managers are required to obtain a real estate broker's license if they are paid to perform the functions of a real estate broker for another based on the management of property in New York. The functions of a real estate broker include listing units for rent or sale, collecting rent from tenants, engaging in tenant relocation and negotiating loans secured by real estate other than residential mortgages.

New York law states that any person or entity engaging in even a single broker function without a broker's license is committing a violation. However, some New York courts have determined that when collection of rent is merely incidental to responsibilities that fall outside the scope of brokerage services, no violation of New York law has occurred. Further, property managers performing strictly maintenance services are not required to be licensed according to the New York Department of State Division of Licensing Services. When a violation does occur, penalties may be assessed against the purported broker and any agreement to pay a commission or other compensation will not be enforced.

Requirements for obtaining a broker's license

For an entity to obtain a real estate broker's license, a partner of a partnership, a manager or member of a limited liability company, or an officer of a corporation must apply for the real estate broker's license on behalf of the entity and meet the requirements. An applicant must show proof that he or she completed at least 120 hours of real estate courses approved by the New York Secretary of State and pass a qualifying examination administered by the Department of State. Additionally, the applicant must either have two years of full-time experience as a licensed real estate salesperson under the supervision of a real estate broker or have the equivalent full-time experience in general real estate business for a period of at least three years, which can include experience gained outside of the state of New York. New York uses a point system in determining experience, with 3,500 points equaling two years of full-time experience. An entity must ensure the

appropriate documentation is filed along with the application and applications usually take 4–6 weeks to be processed.

Real estate salespersons

Once the license is issued, only the person who applied and actually received the license may perform real estate broker functions on behalf of a property management company. Any other partner, member or manager or officer, as the case may be, wishing to act as a real estate broker must also obtain a license that expires on the same date as the entity's license. As an alternative, however, other employees of the company can become licensed real estate salespersons. Real estate salespersons may perform broker functions while acting as an agent for and being supervised by a representative broker.

Real estate salespersons must also be licensed, though the requirements are not as stringent as those for a real estate broker. A salesperson must complete 75 hours of approved real estate courses and pass a qualifying examination administered by the Department of State. Other employees may also work under a broker without even obtaining a salesperson license as long as they only engage in certain clerical and secretarial activities. Some of these functions include:

- answering phones,
- arranging and scheduling appointments,
- assembling documents,
- drafting ads,
- typing contract forms for approval by the broker,
- ordering repair items, and
- monitoring licenses and personnel files.

Alternatives to getting licensed

Property management companies that are unable to or do not wish to apply for a real estate broker's license have limited options if they want to perform broker functions. One option may be for the property management company to outsource its broker functions to a person or entity that is a licensed real estate broker. In this case, the property management company would not be able to conduct broker functions itself, but could still maintain a level of control over the broker's activities.

Additionally, attorneys licensed to practice in New York can obtain a real estate broker's license without completing the education or experience requirements, although an application must still be filed. Therefore, if, for example, a property management corporation has an officer who is a licensed New York attorney, said attorney officer could apply to be the corporation's licensed broker. The processing of an attorney applicant's application is quicker than that of a non-attorney applicant, typically 2–4 weeks.

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