SPRINKLER SYSTEM DISCLOSURE LAW

In 2014, S. Anthony Gatto, Esq., NYSAR Legal Counsel, published an important article in *LEGALLINES*, a NYSAR publication. It is republished below for the benefit of all members and reads as follows:

On August 5, 2014, Gov. Andrew Cuomo signed into law a requirement that the presence of, and maintenance of, residential sprinkler systems be disclosed on all residential leases in New York. The text of the new law appears at the end of this article and can be found in Real Property Law §231-A. The law took effect on December 3, 2014.

Section 1 of the law requires every residential lease to contain a "conspicuous notice in bold face type as to the existence or non-existence of a maintained and operative sprinkler system in the leased premises." Section 3 of the law further requires that "if there is a maintained and operative sprinkler system in the leased premises, the residential lease agreement shall provide further notice as to the last date of maintenance and inspection." Since there is no exception for proprietary leases in a cooperative, they, too, fall under the requirement. At the very least, every residential lease must contain a statement in conspicuous boldface type that reads:

The leased premises (choose one of the following) is/is not serviced by a maintained and operative sprinkler system that was last maintained on __/__/__ and was last inspected on __/__/__. There is no penalty provision contained in the law so until there is a violation, the effect of noncompliance is unknown.

There is no penalty provision contained in the law so until there is a violation, the effect of noncompliance is unknown.

In response to the signing of the new law, NYSAR met with the New York State Department of State, Division of Licensing Services. During the meeting, the new law was brought to the attention of DOS and the responsibilities of real estate licensees complying with the law were discussed at length. In the discussions, NYSAR proposed that licensees should not be subject to DOS discipline if a residential lease is signed without the required disclosure. Based on the precedent setting case of Duncan & Hill Realty, Inc. v. Department of State, 62 A.D.2d 690, (4th Dept. 1976), brokers and salespersons are prohibited from providing legal advice to their clients. As such, brokers and salespersons are not qualified to, and should not be reviewing, the terms of a lease or purchase contract for completeness or legality.

Duncan & Hill also prohibits licensed brokers and salespersons from preparing contracts related to real estate transactions such as purchase contracts and leases. According to the DOS Memorandum "LI04 Real Estate Brokers and Salespersons and the Unauthorized Practice of Law:"

"Judiciary Law §478 prohibits the practice of law by non-attorneys, the purpose of which is to protect the public from the dangers of legal representation and advice given by persons not trained, examined, and licensed for such work. Jemzura v. McCue, 45 A.D.2d 797, 357 N.Y.S.2d

167 (3rd Dept. 1974), app dismissed 37 N.Y.2d 750, 337 N.E.2d 135, 374 N.Y.S.2d 624 (1975). Section 484 of the Judiciary Law additionally provides that 'no natural person shall ask or receive, directly or indirectly, compensation for... preparing deeds, mortgages, assignments, discharges, leases or any other instruments affecting real estate... unless he has been regularly admitted to practice, as an attorney or counselor...' A violation of either of these sections is a misdemeanor. See, Judiciary Law §485. It may be prosecuted by the attorney general, or, upon leave of the supreme court, by a bar association. See, Judiciary Law §476-a. Additionally, should a real estate broker or salesperson be found to have engaged in such unlawful practice, the Department will take independent action against such person's license."

According to Duncan & Hill, real estate licensees may protect themselves from a charge of unlawful practice of law by inserting in the document that it is subject to the approval of the respective attorneys for the parties. If a licensee is using a fill-in-the-blank lease provided by the landlord, it should contain an attorney approval clause to protect the licensee from the charge of Unauthorized Practice of Law. As was stated in Duncan & Hill: "The argument that the need for expediting such transactions justifies their consummation without reference to an attorney is specious. The protection of the interests of the parties to such contracts is sufficiently important to justify a little delay for reflection and legal advice, so as to guard against a thoughtless drafting of a hastily conceived contract. The personal interest of the broker in the transaction and the fact that he is employed by one of the opposing parties are further reasons to require that, insofar as the contract entails legal advice and draftsmanship, only a lawyer or lawyers be permitted to prepare the document to ensure the deliberate consideration and protection of the interests and rights of the parties."

NYSAR does not recommend that brokers provide blank leases for their landlord clients or customers. Brokers that do so assume additional liability for the content and form of the lease they are providing. Furthermore, if a broker provides the landlord with a blank lease to use, it would have to comply with all laws, rules and regulations for content, etc. This would mean that if the broker provides the lease, the broker may be liable if the fire sprinkler disclosure does not appear conspicuously in bold face type within the lease. Brokers that do provide blank leases are doing so at their own risk and should have the lease prepared and/or reviewed by competent legal counsel for compliance with any law, rule or regulation in order to minimize any potential for liability. Even if the broker is providing a blank lease purchased from a third party entity, it should be reviewed by competent legal counsel.

REAL PROPERTY LAW §231-A. SPRINKLER SYSTEM NOTICE IN RESIDENTIAL LEASES

1. EVERY RESIDENTIAL LEASE SHALL PROVIDE CONSPICUOUS NOTICE IN BOLD FACE TYPE AS TO THE EXISTENCE OR NON-EXISTENCE OF A MAINTAINED AND OPERATIVE SPRINKLER SYSTEM IN THE LEASED PREMISES.

2. FOR PURPOSES OF THIS SECTION, “SPRINKLER SYSTEM” SHALL HAVE THE SAME MEANING AS DEFINED IN SECTION ONE HUNDRED FIFTY-FIVE-A OF THE EXECUTIVE LAW.

3. IF THERE IS A MAINTAINED AND OPERATIVE SPRINKLER SYSTEM IN THE LEASED PREMISES, THE RESIDENTIAL LEASE AGREEMENT SHALL PROVIDE FURTHER NOTICE AS TO THE LAST DATE OF MAINTENANCE AND INSPECTION.