

Licensing of Apartment Information Vendors

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Licensing of Apartment Information Vendors

Article 12-C, Real Property Law

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Licensing of Apartment Information Vendors

§446-a. Definitions

As used in this article, unless the context otherwise requires:

1. "Person" means any natural person, corporation, limited liability company, partnership, firm, or association.
2. "Apartment information vendor" means any person who engages in the business of claiming, demanding, charging, receiving, collecting, or contracting for the collection of, a fee from a customer for furnishing information concerning the location and availability of real property, including apartment housing, which may be leased, rented, shared or sublet as a private dwelling, abode, or place of residence. The definition of apartment information vendor shall include an apartment sharing agent which means any person who, for a fee, arranges, conducts, coordinates, handles or causes meetings between a customer and the current owner or occupant of legally occupied real property, including apartment housing, who wishes to share that housing with one or more individuals as a private dwelling, abode or place of residence, but it shall not apply to any person 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 the relocation of commercial or residential tenants from buildings or structures that are to be demolished, rehabilitated, remodeled or otherwise structurally altered.
3. "Advance fee" means any fee claimed, demanded, charged, received or collected from a customer before the customer has leased or rented a private dwelling, abode or place of residence through the information provided by an apartment information vendor.

§446-b. License required

1. It is unlawful for any person to act or engage in the business as an apartment information vendor in this state without first having obtained a license from the Secretary of State. No person shall be granted a license until he has established that he is trustworthy and bears a reputation for good and fair dealing.
2. The application for such license shall be filed in the office of the Secretary of State on such forms as the secretary may prescribe.
3. When the apartment information vendor maintains more than one place of business, he shall apply for a supplemental license for each branch office so maintained. Supplemental licenses shall be conspicuously displayed in each branch office. The display of an expired license by any person, firm, partnership or corporation is a violation of the provisions of this article.
4. From and after the date when this subdivision shall take effect, the term for which a license shall be issued or reissued under this article shall be a period of one year beginning the first day of November in any year and ending the 31st day of October one year later. A license which takes effect on a day other than the first day of November in any year shall extend for a term expiring on the 31st day of October following the date on which the license takes effect.
5. Any license granted under the provisions hereof may be renewed for one year by the secretary upon application therefor by the holder, in such form as the secretary may prescribe. The secretary may dispense with the requirement for the filing of such statements as was contained in the original application for license.

6. Every applicant for a license under the provisions of this section, shall establish and maintain a special interest bearing trust account in the minimum amount of \$5,000 in a branch of a national or state chartered banking institution having a place of business within the state, plus \$2,500
- NYS Department of State Division of Licensing Services*

for each additional licensed office, except that any applicant whose business is limited exclusively to acting as an apartment sharing agent shall be required to establish and maintain an account of only \$2,500 plus \$1,250 for each additional licensed office. No license shall be issued unless a copy of a certificate of deposit showing the minimum balance in said special interest bearing trust account has been filed with the secretary simultaneously with the filing of the license application. Moneys may be withdrawn, from such account only upon the certification of the secretary.

7. No license shall be granted to a person under the age of 18 or a corporation, limited liability company, partnership or association whose principal shareholder, member or partner is under such age.

§446-c. Contracts; fees; reporting procedures

1. Every apartment information vendor licensed under this article shall furnish customers with a contract prepared on a form approved by the Secretary of State. Such contract shall include in plain language form a statement setting forth the sources of information concerning the location and availability of real property, including apartment housing, which may be leased, rented, shared or sublet as a private dwelling, abode, or place of residence.

- 1-a. Each listing of real property furnished by the apartment information vendor shall cite the source of information for each property in plain language form, provided, however, that the failure to provide such information shall not constitute a violation of this article but shall be grounds for license suspension pursuant to §446-e of this article.

2. No apartment information vendor shall claim, demand, charge, receive, collect or contract for an advance fee from a customer except as set forth in subdivision five of this section. In no event shall the fee charged to the customer or legal occupant exceed one month's rent.

3. Notwithstanding the above, an apartment information vendor may at any time accept a fee from the current legal occupant of real property including apartment housing available to share or sublet.

4. Each apartment information vendor shall file a quarterly report with the secretary containing such information as the secretary may require.

5. (a) An apartment information vendor may retain not more than \$15 dollars out of any advance fee for administrative services. The balance of any advance fee shall be placed in an account similar to that required by subdivision 6 of §446-b of this article, except that it need not be interest bearing and moneys from such account may be withdrawn as provided in paragraph (b) of this subdivision. The balance of the advance fee shall continue to be the property of the person paying the advance fee and shall be held in trust by the apartment information vendor. Such balance may be mingled with other moneys in such account and any interest thereon shall be the property of the apartment information vendor. Such vendor shall notify in writing each person paying an advance fee giving the name and address of the banking organization in which the advance fee is deposited.

- (b) If the customer pays an advance fee, the contract with the apartment information vendor shall contain a provision stating that the customer may, under the circumstances set forth in this paragraph, recover his advance fee less the amount deducted for administrative services. The vendor shall be entitled to his fee when a customer has leased or rented a private dwelling, abode or place of residence through the information provided by the vendor. Within 10 days of the receipt by the apartment information vendor of written notice stating that the customer paying an advance fee has not leased or rented a private dwelling, abode or place of residence through the information supplied by

the vendor and does not intend to rent any such private dwelling, abode or place of residence, the vendor shall refund the advance fee, less the fee for administrative services, to such customer. The vendor shall also be required to refund any portion of the advance fee in excess of one month's rent to a customer who has leased or rented a private dwelling, abode or place of residence through the information supplied by the vendor.

- (c) Notwithstanding anything in this subdivision 5 to the contrary, if the services to be rendered by the apartment information vendor to a particular customer relate exclusively to acting as an apartment sharing agent, the vendor may retain the full advance fee, whether or not the customer leases or rents a private dwelling, abode or place of residence through the information provided by the vendor, and the provisions of paragraphs (a) and (b) of this subdivision five shall not be applicable to such transaction.

§446-d. Display of license and business sign

1. A license issued hereunder shall be conspicuously displayed at all times by the apartment information vendor at the place of business for which it was granted.

2. The secretary shall be notified in writing at his or her office in Albany of any change of a licensee's business address or name, and the secretary shall issue a license for the unexpired term, upon return of the original license. A licensee who fails to notify the secretary of any change in business address or name within 10 days shall forfeit his or her license.

§446-e. Revocation and suspension of licenses

1. Powers of Secretary of State. The secretary may revoke or suspend a license, impose a fine not to exceed \$5,000, order refunds to aggrieved parties, and issue reprimands, upon a finding that a licensee has violated any of the provisions of this article, or has made a material misstatement in his application for such license, or has been found to be engaged in fraudulent practices, dishonest or misleading advertising, or has demonstrated untrustworthiness or incompetency to act as an apartment information vendor.

2. Determination of secretary. In the event that the secretary shall revoke or suspend any such license, impose a fine or issue a reprimand, his determination shall be in writing and signed by him. The original thereof shall be filed in the office of the secretary and copies served personally or by registered mail upon the licensee, addressed to his principal place of business. All licenses shall be returned to the secretary within five days after receipt of notice of revocation or suspension, or in lieu thereof, the licensee shall make and file an affidavit in form prescribed by the secretary showing that the failure to return such license is due either to loss or destruction thereof.

3. The display of a license after revocation or suspension thereof is a violation of this article.

§446-f. Notice of hearing on complaints

The secretary shall, before denying an application for, revoking or suspending a license, or imposing any fine or issuing a reprimand to the licensee, and at least 10 days prior to the date set for the hearing, notify in writing the applicant, or licensee of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery thereof personally to the applicant or licensee, or by certified mail to the last known business address of such licensee, or in the case of an applicant to the business address indicated on the application for license. The hearing on such charges shall be at such time and place as the secretary shall prescribe. The secretary, acting by such officer or person as he may designate,

shall have the power to suspend a license pending a hearing and to subpoena and bring before the officer or person so designated any person, firm or corporation in this state, and administer an oath to and take testimony of any person or cause his deposition to be taken. A subpoena issued under this section shall be regulated by the Civil Practice Law and Rules.

§446-g. Judicial review

The action of the secretary in granting or refusing to grant or to renew a license under this article or in revoking or suspending such a license or imposing any fine or issuing a reprimand to the licensee or refusing to do any of the foregoing shall be subject to review by a proceeding brought under and pursuant to article 78 of the Civil Practice Law and Rules at the instance of the applicant for such license or holder of a license so revoked, suspended, fined or reprimanded or the person aggrieved.

§446-h. Violations

1. Misdemeanors. Any person, firm or corporation violating any provision of this article shall be guilty of a misdemeanor. The commission of a single act prohibited by this article shall constitute a violation hereof.

2. Criminal actions for violations of this article shall be prosecuted by the Attorney General, or his deputy, in the name of the people of the state, and in any such prosecution the Attorney General, or his deputy, shall exercise all the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein. The Attorney General shall, upon a conviction for a violation of any provision of this article, and within 10 days thereafter, make and file with the secretary a detailed report showing the date of such conviction, the name of the person convicted and the exact nature of the charge.

3. In case the offender shall have received any sum of money as compensation or profit by or in consequence of his violation of any provision of this article, he shall also be liable to a penalty of not less than the amount of the sum of money received by him as such compensation or profit and not more than four times the sum so received by him, as may be determined by the court, which penalty may be sued for and recovered by any person aggrieved and for his use and benefit, in any court of competent jurisdiction.

4. The secretary shall have the power to enforce the provisions of this article and upon complaint of any person, or on his own initiative, to investigate the business, business practices and business methods of any person, firm or corporation applying for or holding a license as an apartment information vendor, if in his opinion such investigation is warranted. Each such applicant or licensee shall be obliged, on request of the secretary to supply such information as may be required concerning his or its business, business practices or business methods, or proposed business practices or methods.

5. For the purpose of enforcing the provisions of this article and in making investigations relating to any violation thereof, and for the purpose of investigating the character, competency and integrity of the applicants or licensees hereunder, and for the purpose of investigating the business, business practices and business methods of any applicant or licensee, or of the officers or agents thereof, the secretary shall have the power to subpoena and bring before the officer or person so designated any person in this state and require the production of any books or papers which he deems relevant to the inquiry and administer an oath to and take testimony of any person or cause his deposition to be taken with the same fees and mileage and in the same manner as prescribed by law for civil cases in a court of record, except that any applicant or licensee or officer or agent thereof shall not be entitled to such fees and/or mileage. Any person, duly subpoenaed, who fails to obey such subpoena without reasonable cause or without such cause refuses to be examined or to answer any legal or pertinent question as to the character or qualification of such applicant or licensee,

see or such applicant's or licensee's business, business practices and methods or such violations, shall be guilty of a misdemeanor.

6. In any criminal proceeding before any court, magistrate or grand jury, or upon any investigation before the Department of State for a violation of any of the provisions of this section, the court, magistrate or grand jury, or the Secretary of State, his deputy or other officer conducting the investigation, may confer immunity, in accordance with the provisions of the Criminal Procedure Law.

§446-i. Rules and regulations

The secretary may enact rules and regulations necessary to accomplish the purposes of this article.

§446-j. Partial invalidity

If any provision of this article shall be held unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to affect, impair, or invalidate the remainder thereof.

RULES AND REGULATIONS
TITLE 19 NYCRR
APARTMENT INFORMATION VENDORS
PART 190
GENERAL PROVISIONS

§190.1 Contract

(a) An agreement between an apartment information vendor and a customer shall not be enforceable unless a fully executed, sequentially numbered contract in the form set forth in subdivision (b) or (c) of this section is delivered to the customer.

(b) The form of the standard apartment information vendor contract-
rental shall be printed on 8½ inch by 11 inch paper, as follows:

No. _____
(enter sequential number)

NO FEE IS TO BE PAID WHEN THIS CONTRACT IS
SIGNED. THE CUSTOMER MUST SIGN AND RECEIVE A
SEPARATE ESCROW AGREEMENT BEFORE AN AD-
VANCE FEE MAY BE COLLECTED.

STANDARD APARTMENT INFORMATION
VENDOR CONTRACT-RENTAL

Agreement between (vendor) _____
(print name and address of apartment information vendor)

and (customer) _____
(customer's name and address)

(1) Customer seeks information regarding living accommodations
with the following specifications:

Date available _____
Geographical location _____
Type of accommodation (apartment, house, etc.) _____
Number of rooms _____
Elevator service required _____
Monthly rental range _____

(2) Vendor represents that the following listings meet customer's
specifications as set forth in paragraph (1):

Address _____
(include nearest intersection)
Name and telephone number of owner or managing agent: _____
Number of rooms _____ Monthly rent _____
Utilities included _____ Floor location _____
Elevator service available _____ Date available _____

(Additional listings shall be set forth on reverse or attachment)

(3) The customer agrees to pay a fee of _____ payable when the
customer rents or leases an apartment as a result of information sup-
plied by the vendor. If, however, one month's rent for the apartment
rented or leased by the customer is less than this amount, the fee shall
be automatically reduced to an amount equal to one month's rent.

(4) The vendor agrees to be personally responsible and liable for
carrying out the terms of this agreement.

(5) This document has been filled out and signed by: _____

(Print full name and address of authorized agent)

Signature of Customer

Signature of Vendor, or his duly authorized agent
ANY COMPLAINTS ABOUT THIS APARTMENT
INFORMATION VENDOR SHOULD BE MADE TO:

New York State
Department of State
Division of Licensing Services OR You may contact any local
123 William Street, 19th Fl. office of the New York State
New York, N.Y. 10038 Department of State.
Telephone: (212) 417-5747

(c) The form of the standard apartment information vendor contract is
to be used by apartment sharing agents only, and shall be printed on 8½
inch by 11 inch paper, as follows:

No. _____
(enter sequential number)

ANY COMPLAINTS ABOUT THIS APARTMENT SHARING AGENT
SHOULD BE MADE TO:

New York State
Department of State
Division of Licensing Services OR You may contact any local
123 William Street, 19th Fl. office of the New York State
New York, N.Y. 10038 Department of State.
Telephone: (212) 417-5747

STANDARD APARTMENT
SHARING CONTRACT

Agreement between (vendor) _____
(print name and address of apartment information vendor)

and (customer) _____
(customer's name and address)

(1) Customer seeks information regarding shared living accommo-
dations with the following specifications:

Date available _____ Monthly rental range _____
Geographical location _____
Type of accommodation (apartment, house, etc.) _____
Number of rooms _____

Elevator service required _____

Other requirements _____

(2) Vendor represents that the following listings meet customer's specifications as set forth in paragraph (1):

Address _____

(include nearest intersection)

Name and telephone number of owner or primary tenant _____

Number of rooms _____ Monthly rent _____

Utilities included _____ Floor location _____

Elevator service available _____ Date available _____

(Additional listings shall be set forth on reverse or attachment)

(3) Fee _____

(4) The vendor agrees to be personally responsible and liable for carrying out the terms of this agreement.

(5) This document has been filled out and signed by: _____

(Print full name and address of authorized agent)

Signature of Customer

Signature of Vendor, or his duly authorized agent

\$190.2 Escrow agreement required for advanced fee

(a) No apartment information vendor or employee thereof shall collect a fee prior to a customer obtaining an apartment as a result of the information supplied by the apartment information vendor unless said vendor shall deliver to the customer a fully executed contract as described in section 190.1 of this Part and a fully executed separate escrow agreement as described in subdivision (d) of this section.

(b) Any advance fee collected by an apartment information vendor or employee thereof shall be deposited in the vendor's escrow account no later than the business day following the day on which it is received.

(c) The provisions of this section shall not apply to an apartment information vendor who deals solely with apartments to share.

(d) The form of the standard apartment information vendor escrow agreement shall be as follows:

No. _____

(enter sequential number)

APARTMENT INFORMATION VENDOR STANDARD ESCROW AGREEMENT

Agreement between (vendor) _____

(print name and address of apartment information vendor)

and (customer) _____

(customer's name and address)

entered into on _____

(date)

(1) Vendor acknowledges receipt this day of an advance fee from the customer, in the amount of _____.

(2) In consideration of customer's payment of such fee before an apartment has been obtained, and in accordance with the provisions of article 12-C of the Real Property Law, vendor agrees to deposit such fee in escrow, less _____ (not more than \$15) (Fee for administrative expenses.)

(3) The vendor shall deposit the advance fee in:

(print name and address of bank, and account number where escrow will be deposited)

AMOUNT OF THE ADVANCE FEE

(4) The vendor may not receive an advance fee which is greater than one month's rent for any of the apartments on the list supplied to the customer.

(5) If the monthly rental of the apartment rented or leased by the customer through information supplied by the vendor, is less than the advance fee, the customer shall receive a refund equal to that portion of the advance fee that is in excess of the amount of the monthly rental. This refund shall be made within 10 days of the date on which customer makes a written request for said refund.

PROCEDURE FOR OBTAINING A REFUND

(6) It is understood and agreed that the customer has an absolute right to receive a refund of the full advance fee if he or she follows the following directions:

a. The customer will receive a refund when the vendor is notified that the customer has not leased or rented and does not intend to rent or lease an apartment, or other residence, through information supplied by the vendor.

b. The notice must be in writing signed by the customer.

c. The notice may be delivered to the vendor either in person or by first class mail to the vendor's address set forth above.

(7) The vendor shall refund the advance fee, less the fee for administrative expenses set forth in paragraph (2) above, within 10 days of receipt of the notice; and the customer shall NOT be required to present evidence that he or she actively pursued the information supplied by the vendor to be eligible for a refund.

(8) The vendor agrees to be personally responsible and liable for carrying out the terms of this escrow agreement.

(9) This document has been filled out and signed by: _____

(Print full name and address of authorized agent)

(Signature of Customer)

Date

(Signature of Vendor, or his duly authorized agent)

Date

Date Delivered to Customer: _____

ANY COMPLAINTS ARISING FROM THIS AGREEMENT MAY BE MADE TO:

New York State

Department of State

Division of Licensing Services OR

123 William Street, 19th Fl.

New York, N.Y. 10038

You may contact any local

office of the New York State

Department of State.

\$190.3 Records to be maintained

The following records of every business transaction must be maintained at the principal office of the vendor for a period of three years:

(a) duplicate signed copies of all contracts;

(b) copies of notices to the Department of State pursuant to section 190.4 of this Part;

(c) copies of landlord's authorization for each apartment to which prospective tenants are referred; and

(d) duplicate signed copies of escrow agreements.

§190.4 Notice of authorized employees

Each apartment information vendor shall file with the department written notice of the name and home address of each employee authorized to execute contracts or receipts on his or her behalf. If and when such authority is revoked, the vendor shall notify the department thereof in writing. The written notification required in this section shall be made within five days of the authorization or revocation.

§190.5 Verification of information

No apartment information vendor or employee thereof shall refer a prospective tenant to an apartment unless the availability of such apartment is verified by the vendor or employee at the time of referral.

§190.6 Restrictions on apartments listed

No apartment information vendor or employee thereof shall refer a prospective tenant to an apartment unless:

- (a) the apartment information vendor agent has the written authority of the owner to list the apartment; and
- (b) the apartment meets the specifications of said tenant as set forth in the standard apartment information vendor contract.

§190.7 Supervision of employees

Each apartment information vendor shall supervise his employees to insure their compliance with all requirements of the provisions relating to apartment information vendors in article 12-C of the Real Property Law and this Part. Any violation of the law or regulations by an employee shall be attributable to the vendor, and the vendor shall be held responsible for such violations.

§190.8 Advertisements

No apartment information vendor shall place any advertisements for specific apartments. Advertisements shall be limited to the vendor's name, address, telephone number and business hours, and a description of the services offered.