



Two years after Premier Agent fracas, NYS regulators tighten rules for online ads

New regulation applies also to brokerage firms

By [E.B. Solomont](#) | May 31, 2019 12:10PM



REBNY president John Banks and Zillow CEO Richard Barton (Credit: iStock)

UPDATED: May 31, 3:30 p.m.: Two years after New York's top brokers blasted StreetEasy's Premier Agent for causing a "maelstrom" of consumer confusion, New York state regulators are poised to enact tighter regulations related to online advertising.

The New York State Board of Real Estate voted Friday on new rules that govern who can advertise for-sale property — and how they may do so. After the vote, there will be a 60-day public comment period before the rule goes into effect.

Ahead of the vote, stakeholders on both sides of the aisle said they [considered](#) the final language of the regulation a win.

Although regulators initially looked at real estate advertising laws amid the fracas over Premier Agent, there are two components to the new rule: One that requires brokerage firms to obtain authorization if they display a listing that is subject to another firm's exclusive listing agreement, and one that requires third-party sites to make clear when a broker is paying for an ad.

Specifically, any ad on a third-party site must, at a minimum, include the word “advertisement” immediately following the broker’s name.

State regulators have been reviewing agent advertising in response to backlash over Premier Agent, which StreetEasy launched in 2017. In March of that year, the Real Estate Board of New York [demanded a probe](#) into whether the program was permitted under the state’s real estate advertising laws. REBNY sent two letters urging the state to make sure all third-party portals were abiding by current real estate advertising laws.

In the weeks leading up to the vote, stakeholders tried to keep a lid on the regulation’s final language. “Confidentiality is essential, particularly in connection with this matter,” read a May 24 email sent by attorney Claude Szyfer to members of REBNY’s residential board. “We believe that we are finally at the finish line, and clearly do not want anything to sully that now.”

In a statement on Friday, REBNY President John Banks commended the state for passing regulations that would be “good for both the consumer and real estate agents.”

“As we made clear to the Department of State, REBNY heard too many stories of consumer confusion regarding the advertisement of real estate properties — particularly with regard to who the listing broker was,” he said. The regulation “will help to clarify the process of buying a home in New York.”

In an opinion letter circulated last year, state regulators indicated StreetEasy would be required to add a series of additional disclosures to Premier Agent — but it also hinted that there would be additional disclosures for agents and firms.

To wit, the final text says that agents and brokers may not advertise properties subject to an exclusive listing with another broker “without authorization from the exclusive listing broker.” Such ads must also “clearly and conspicuously” disclose the name of the exclusive listing broker.

“We support real estate advertising that provides clarity and transparency for consumers, and fair rules for agents and brokers,” Zillow Group said in a statement Friday. “We will continue to be engaged during the public comment period and fully expect to comply with the final regulations.”

The language of the final regulation, however, has upset some broker, who argue the provision targets agents who want to bring their exclusive listings to a new firm. Under REBNY rules, exclusive listings belong to brokerage firms — not agents — so if and when an agent switches firms, it’s the prerogative of the old firm to release the listing. Some do as a matter of course but others don’t, agents said.

“This is just a sneaky way to come around the back door to prevent agents — when and if they move firms — from being able to take their listings with them,” said Heather McDonough Domi, an agent at Compass and a co-founder of the New York Residential Agent Consortium, an agent advocacy group. She said NYRAC “very much” supports the agent’s independent contractor status, and this regulation threatens that. “The most critical factor is that we strongly believe in the consumer’s right to choose.”

Last fall, Douglas Elliman Chairman Howard Lorber said Compass has unfairly gone after other firms’ listings when it recruits agents. “That’s unethical and improper under REBNY rules,” he said at the time, referring to the universal co-brokerage agreement (UCBA), the industry’s rule book for residential agents and firms.

In January, REBNY published a revised UCBA with tighter rules pertaining to “interference” with another firm’s exclusive listing. For example, brokers are prohibited from encouraging sellers to terminate exclusives with other firms and they are not allowed to advertise another firm’s exclusive without permission.

On Friday, REBNY spokesperson Jamie McShane said the new regulation has nothing to do with recruitment. “The new regulations are in line with DOS’ mission to protect the interests of New York State consumers and would do nothing to inhibit an agent’s ability to move from one firm to another,” he said. A representative for Compass was not immediately available for comment.

Since rolling out Premier Agent, StreetEasy has tweaked contact forms to distinguish between the listing agent and Premier Agent.

Nationally, the program accounts for the lion’s share of Zillow’s revenue, or some 67 percent of its \$1.3 billion in revenue in 2018.

During the fourth quarter of the year, Premier Agent revenue grew 11 percent to **\$221 million**, due to changes that prompted some cancellations. As of 2019’s first quarter, Premier Agent revenue had “stabilized,” rising 2 percent to \$217.7 million.

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