Legal

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Standard Operating Procedures FAQ's

Recently, a number of laws have been passed in New York State pertaining to fair housing and these laws have significant impact for real estate licensees. One of these laws requires real estate brokers who service residential homebuyers to create and publish "Standardized Operating Procedures" (the "SOP Law") for their brokerage offices so that prospective homebuyers understand what will be required from them when working with a real estate broker. There is some confusion surrounding the "SOP Law" because it was amended by a "Chapter Amendment" that was signed into law on March 15, 2022. Below are some frequently asked questions to assist.

Frequently Asked Questions

- ### Who must comply with the new SOP law?

  All licensees including brokers, associate brokers, salespersons and teams. The term "broker" when used also includes all aforementioned licensees of the broker.

- ### What types of brokerages are impacted by the new SOP law?

brokers that practice exclusively in residential, commercial, leasing, referral or property management. As such, all brokers, associate brokers, salespersons and teams must be in compliance.

- **What is the purpose of the new SOP law?**

To comply with Fair Housing and NYS Human Rights Law, all real estate licensees licensed with a broker should be treating all consumers the same. The NYS Senate held hearings following the *Newsday* investigation and found there were instances of unequal treatment related to a protected class. This law was passed as a result of those findings and to ensure that all consumers are treated the same by brokers. Unequal treatment of consumers could be grounds for discipline by the NYS Division of Human Rights.

- **What is required to be in the SOP's?**

The law requires a broker to establish an SOP for all associate brokers, salespersons and teams to follow. The SOP must include whether a broker does or does not require prospective homebuyers to provide identification, provide a pre approval or enter into a buyer broker agreement.

- **Does NYSAR have a sample SOP for brokers?**

Yes. A copy of the sample SOP can be **found here** and on NYSAR.COM.

- **Is there a difference between "prospective homebuyer" and "prospective client" as used in the law?**

No. For the purposes of the law, the same definition applies to both.

"prospective buyer clients"?

The statute applies to all prospective homebuyers regardless of agency representation.

- **Do the SOP's apply to dual and designated agency?**

Yes. The SOP's apply to all prospective homebuyers regardless of agency representation.

- **What types of residential property is covered under the SOP law?**

NYSAR has asked the Department of State for clarification as to the definition of "prospective homebuyer." NYSAR will send another Flash Update when we receive the clarification.

- **If I am the listing agent, do the SOP's apply to open houses?**

As the listing agent, you must act in the best interest of your seller and owe them fiduciary duties. Those fiduciary duties require the listing agent to get the seller's permission before requiring any item from prospective homebuyers.

- **If a broker does not require one or more of the three items in the statute, may the broker still ask for identification, offer an exclusive buyer agreement and/or recommend a pre-approval so long as the broker continues to work with the prospective homebuyer if they choose not to?**

The short answer is yes but with the condition that all licensees will follow the same procedure.
Example: If a brokerage does not require a pre-approval from a prospective

important thing to remember is that every licensee must follow the same procedure and it should not deviate from licensee to licensee. It should be presented as an option the same way with all prospective homebuyers.

- **I am a salesperson and only work with prospective homebuyers that sign an exclusive buyer representation agreement. If my broker does not require an exclusive buyer agreement, can I still require one?**

No, an individual licensee or team is prohibited from having a procedure that differs from the broker. All associate brokers, salespersons and teams must follow the SOP of the broker. There are no exceptions.

- **May an associate broker, salesperson or team have an SOP that is different than the brokers SOP?**

No. All licensees associated with the broker must follow the same SOP. Individual licensees and teams are prohibited from establishing their own SOP's.

- **If I am a broker and never do residential transactions, must I adopt the SOP's? Do I need to apply them to transactions not involving a prospective homebuyer?**

Yes you must adopt the SOP's. The statute is clear that "Each real estate broker…" is required to adopt SOP's and does not exempt any brokers. The required SOP's would only apply to a transaction involving a prospective homebuyer. If you have never done and never plan to do a transaction with a prospective homebuyer, the broker is still required to comply with the law.

standardized operating procedures for the prerequisites prospective homebuyers must meet prior to receiving any services." Does this mean if my broker requires one or more items I am unable to provide any services until I receive the item(s)?

No. A broker may provide services to a prospective homebuyer prior to receiving one or more of the required items so long as the broker eventually receives those items (or the prospective homebuyer refuses). Licensees should follow the same procedure for all prospective homebuyers.

- **Can a broker SOP require a pre approval prior to showing a property?**

Yes. A brokers SOP may set forth "when" a required item is to be produced and every associate broker, salesperson and team must follow the same procedure.

- **If a broker requires one or all of the items and a prospective homebuyer refuses to provide them, can the broker still represent the prospective homebuyer?**

Yes.

- **Do I need to post the notarized SOP form on my website or just the language and whether the three items are required or not?**

The signed and notarized document does not have to be posted, just the SOP's. All brokers, associate brokers, salespersons and teams that have a website, mobile app, social media or any internet based site must post the SOP's clearly and conspicuously.

- **How do I post the SOP's to my website/mobile app etc.?**

associate real estate brokers, real estate salespersons and any real estate team…shall prominently and conspicuously display" a link to the SOP's. The DOS has determined that social media accounts constitute a website and the licensee should provide the link on the social media homepage. If there is only space for one link, a link to the licensee's website or broker's website may be used so long as the website contains a link to the SOP's prominently and conspicuously. If the licensee is unable to provide the link on the social media account homepage, they can provide it as the first pinned post or include it in every post.

- **If a broker does not require one or more of the items from prospective homebuyers but a seller requires them prior to a showing, does the prospective homebuyer have to comply?**

Yes. The SOP only addresses a broker's policy with prospective homebuyers. It does not impact the lawful directive of a seller that requires a homebuyer to provide a pre-approval or identification.

- **Does this apply to rental transactions?**

No, but brokers should consider a similar policy for prospective tenants to minimize potential liability if there is an alleged violation of Fair Housing/NYS Human Rights Law.

- **Not all interactions with prospective homebuyers are the same. For instance, a walk-in that wants to view properties may not have an item required under the SOP's if they want to view a property that day. Is it permissible if the walk-in provides the required item at a later time?**

for different scenarios. Using the fact pattern in the question as an example, if a walk-in will provide the required item at a later time, there should be some time frame established such as "before the next showing" or "within X days".

- **Is there a best practice for a broker to follow to ensure compliance?**

The purpose of the law is to ensure equal treatment and services for all prospective homebuyers. Associate brokers, salespersons and teams must all follow the same procedures established by the broker. As a best practice, all licensees should follow the same "script" when working with prospective homebuyers.

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