

## **Rental Registry Laws: Shifting Burden and Responsibility to the Broker – Again?**

By John Dolgetta, Esq.

In recent years, numerous municipalities within the State of New York, whether it be a city, town, village or hamlet, have witnessed the passing and implementation of rental registry laws. This article will focus on municipalities within the territory and jurisdiction of the Hudson Gateway Association of REALTORS®, namely, Clarkstown, Airmont and New Rochelle, just to name a few. It is important to note that each municipality may have a rental registry or rental permit ordinance of its own.

Generally, there are a number of reasons put forth to justify the imposition of such local ordinances, which depend on the particular issues faced by the respective communities, such as public health, safety and welfare of residents, as well as the protection of the character and stability of residential areas; the correction and prevention of housing conditions/violations that adversely affect the physical, mental and social well-being of persons occupying dwellings; and the preservation of the value of land and buildings.

### **A Perusal of the City of New Rochelle and Village of Airmont Ordinances**

The City of New Rochelle ordinance was adopted in July 2016 and applies to one-family, two-family, three-family or multiple-family dwellings that house three or more students attending or about to attend a college or university, or who are on a semester or summer break from studies at a college or university. Registration must be completed no later than September 30th of each year and such registration expires on May 31st. A new registration is required each year. (*See* <http://bit.ly/2nao8A2>). Failure to comply will result in fines and penalties assessed against the property owner/landlord. The first offense carries a minimum fine of \$250.00 per day, up to a maximum fine of \$2,500.00. All subsequent offenses carry a minimum fine of \$500.00 per day, up to a maximum fine of \$2,500.00. (*See* <http://bit.ly/2lYn4z7>).

The Village of Airmont ordinance was adopted in October 2016 and applies to every owner of a one-family dwelling or a two-family dwelling who is engaged in rental occupancy of such premises. Registration is valid for two (2) years (*see* <http://ecode360.com/6589161>). Failure to comply will result in severe fines and penalties assessed against the property owner/landlord. The first offense carries a minimum fine of \$500.00, up to a maximum fine of \$1,000.00, or fifteen (15) days' imprisonment, or both. The second offense carries a minimum fine of \$1,000.00, up to a maximum fine of \$3,000.00, or fifteen (15) days' imprisonment, or both, if there a conviction in connection with the second of two offenses, provided the second offense is committed within five (5) years of the first offense. The third offense carries a minimum fine of \$3,000.00, up to a maximum fine of \$5,000.00, or fifteen (15) days imprisonment, or both, for a conviction of the third of three offenses, all of which were committed within a period of five (5) years. Each week a violation continues shall be deemed a separate offense.

It is noted, however, that there has been one constant in many of these ordinances – it is normally the responsibility of the property owner/landlord to ensure that a rental property is properly registered and not that of a real estate broker – until now, that is.

### **The Town of Clarkstown Ordinance – Not to be Taken Lightly**

The ordinance of the Town of Clarkstown (“Clarkstown Ordinance”) (*see* <http://bit.ly/2lAsO5L>) is a departure from other, similar local ordinances. While the text of the rental registry ordinances of the Village of Airmont and the Town of Clarkstown are almost identical - there is a critical difference. The Clarkstown Ordinance imposes a duty upon a broker and real estate salesperson to not only ascertain whether or not a rental property is registered, but also goes so far as to impose a significant penalty upon brokers and/or real estate salespersons for not complying with same, including making any such violation an offense under the Penal Law. The Clarkstown Ordinance includes hefty monetary fines as well as allowing Clarkstown to notify and file complaints to the Division of Licensing Services of the Department of State (“DOS”).

The provisions of the ordinance that brokers and real estate salespersons need to be aware of are found in Chapter 157, Article IX, § 157-64, which reads, in pertinent part, as follows:

“A. It shall be unlawful and a violation of this chapter and an offense...of the Penal Law...for any broker or agent to list, solicit, advertise, exhibit, show or otherwise offer for lease, rent or sale on behalf of the owner any dwelling unit for which a current rental permit has not been issued by the Building Inspector.... It shall be the broker's or agent's duty to verify the existence of a valid rental registration before acting on behalf of the owner.

B. It shall be unlawful...to accept a deposit of rent or security, or a commission, in connection with the rental of a rental dwelling unit...where no valid rental registration has been issued....

C. In the event that a person convicted of a violation of this section shall have been a real estate broker or salesperson licensed by the State of New York...the Town Clerk shall transmit a record of such conviction to the Division of Licensing Services of the Department of State and make complaint thereto....pursuant to Article 12-A of the Real Property Law.”

Failure to comply will result in harsh fines and penalties assessed against the property owner/landlord and/or the broker/real estate salesperson. The penalties are as follow: “(1) A fine of not less than \$3,500 and not exceeding \$5,000 upon conviction of a first offense. (2) A fine of not less than \$7,000 nor more than \$10,000 for a conviction of the second of two offenses, both of which were committed within a period of five years. (3) A fine of not less than \$10,000 nor more than \$15,000 for a conviction of the third of three offenses, all of which were committed within a period of five years.”

The ordinance further provides that for each week a violation continues it shall be deemed to be a separate offense. As noted above, the Clarkstown ordinance clearly places an affirmative duty upon brokers and real estate salespersons. Failure to abide by this ordinance not only constitutes a violation of the Penal Law, but it also allows the Town of Clarkstown to send a copy of the conviction to the DOS and file a complaint with it.

### **To Accept the Trend or to Defend?**

Is it becoming a dangerous trend to require brokers and real estate salespersons to continuously educate their clients, whether they be sellers or landlords, about their obligations under the law (rather than an attorney doing so)? Should they be able to rely on the legal doctrine of “*Caveat Emptor*” (“let the buyer beware”) and not have a duty to ascertain the legal status of properties prior to listing same for rent or sale? Unfortunately, under the specific instance dealt with under the Clarkstown Ordinance, it is clear that the responsibility to make such an investigation falls squarely on the licensed broker and real estate salesperson, as well as the owner/landlord.

The Clarkstown ordinance is not the first instance where the responsibility to ascertain the legal status of a property prior to listing it for sale or rent is imposed upon a broker/real estate salesperson, and which carries consequences for not complying. For the better part of a year now, there has been an assault on the long-standing legal doctrine of “*Caveat Emptor*” in the State of New York. (See “*Brokers Beware*” – *the Doctrine of “Caveat Emptor” Revisited!*, Real Estate In-Depth (August, 2016) at <http://bit.ly/2m0qP77>).

In May, 2016, David Mossberg, Esq., a senior DOS attorney, addressed the divide among the Courts and confirmed the DOS’s stance. Mr. Mossberg stated that the DOS “...does not believe that a licensee can avoid responsibility for placing a misleading advertisement by reason of an unknown status. Accordingly, notwithstanding the decision in *Guzman*, a broker who fails to demonstrate a working knowledge of the property being marketed, fails to demonstrate the level of competency required to transact business as a licensee in violation of NY RPL § 441 and § 441-c.” However, the Court in *Guzman* held that the theory of “caveat emptor” is alive and well and that a broker and real estate salesperson need not ascertain the legal status of a property. (See *Ader v. Guzman* (2016 N.Y. App Div. LEXIS 139; 2016 Slip Op 00136, decided on January 13, 2016)).

### ***Caveat Broker (Broker Beware)***

Irrespective of the philosophical divide as to whether a broker should be held to a higher standard than the general public to ascertain the legal status of a property prior to listing such property for sale or rent, one issue is clear: that brokers and real estate salespersons listing properties for rent in the aforementioned municipalities and political subdivisions need to be aware of the rental registry ordinances in each municipality and the penalties for non-compliance, and especially with regard to the Town of Clarkstown.

Clearly, as it is important for real estate salespersons and brokers to make certain that they do not misrepresent the property that is being listed for lease or sale and its legal status, so is

it equally important to ascertain whether a rental permit has been obtained by the owner/landlord pursuant to local rental registry ordinances. Brokers and real estate salespersons must be cognizant that, as professionals in their field and as REALTORS® upon whom the public relies for accurate information in furtherance of their decision-making process, they have an affirmative duty to ascertain the veracity of a seller or landlord's representation as to the condition and legal status of a property.

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Legal Column author John Dolgetta, Esq. is the principal of the law firm of Dolgetta Law, PLLC which acquired the law practice of former Board Counsel, Edward I. Sumber. Sebastian D'Acunto, Esq. assisted in the preparation of this Article and is a Senior Associate at Dolgetta Law, PLLC. For information about Dolgetta Law, PLLC, John Dolgetta, Esq. and Sebastian D'Acunto, Esq., please visit <http://www.dolgettalaw.com>.

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