

## **Rental listings on the RLS**

*Please note that some of the responses here are based on the terms of the FARE Act as currently drafted and may not reflect the actual views of REBNY, which is still a party to a lawsuit challenging the constitutionality of the FARE Act.*

### **1) How will the FARE Act impact the RLS? Will rental listings continue to appear on the RLS?**

The RLS is committed to maximizing exposure for all participants' exclusive rental listings. Under the FARE Act, however, an agent "publishing" a listing is presumed authorized by the landlord to do so, and any agent having such authorization cannot impose any fee on the tenant.

RLS syndication feeds exclusive rental listings to other brokers' and third-party websites based upon permissions set at submission. This feed could be viewed as "publishing" under the FARE Act which would then prohibit these brokers from imposing a fee upon a tenant.

As of August 1, 2025, please use the updated guidelines below when submitting rental listings to the RLS:

**Rental listings where the landlord offers compensation to the tenant broker the listing should be submitted as Standard Active listings** (eligible for syndication to IDX, VOW, etc.).

**Rental listings where the landlord does *not* offer compensation to the tenant broker the listings should be submit as Internet Entire Listing Display YN = No listings** (non-syndicated). (Rev 8/25)

### **2) Will the RLS be updated to include new fields for fee disclosure? Will the word "fee" appearing in the property description result in an RLS violation?**

The RLS will be updated with new fields to accommodate the FARE Act's requirement that all fees paid by the prospective tenant appear on the listing. But this will take some time. In the meanwhile, when listing on the RLS, enter these fees in the rental property description. The word "fee" in the rental property description will not result in a RLS violation.

### **3) A landlord wants to offer two rent amounts – a higher rent where landlord pays broker fees and a lower where tenant pays broker fees. Does the FARE Act permit this?**

With the exception of rent-stabilized units, landlords may set any rents they wish upon a rental unit, including two different rents. However, setting two rents for the same unit – a higher rent where the landlord pays a broker fee and a lower rent where the tenant pays any broker fee – may run afoul of the FARE Act. Landlords should consult with their counsel before advertising or offering any properties with two different rents. (Rev 8/25)

## **Broker Representation Agreements**

### **4) I am the listing broker and refuse to make a showing appointment for anyone without a representation agreement with their tenant-client. Is this practice acceptable?**

Brokers are strongly encouraged to establish an agency relationship with their represented party. The New York State Agency Disclosure Form and Compensation Agreements are essential tools for documenting these relationships.

As a listing broker, you may ask the tenant broker if she has a representation agreement with her tenant-client, but you may not require that it be produced and cannot refuse to arrange a showing appointment for anyone without a representation agreement. A tenant broker without a representation agreement with the tenant-client risks not being compensated. (Rev 8/25)

### **Disclosure of Fees**

#### **5) What fees need to be disclosed and when do they need to be disclosed?**

There are two occasions when fees must be disclosed under the FARE Act.

First, on the rental listing, fees that a prospective tenant must pay for the rental of an apartment must be conspicuously disclosed. These include application fees, and any other fees payable prior to lease signing.

Second, prior to lease signing, landlords or their agents must give tenants an itemized written disclosure of all fees the tenant must pay the landlord, or any person at the direction of the landlord, in connection with the rental of the apartment. The fees must include a written description, and the tenant must sign the itemized disclosure before signing a lease. Landlords or their agents must keep the signed disclosure for three years and give a copy to the tenant.

#### **6) A landlord's broker often does not know all the fees payable to the landlord. How can a landlord's broker make sure that all the fees are disclosed prior to lease signing?**

The broker should confer with the landlord and/or the landlord's property manager to confirm all fees in connection with the rental of the property.

#### **7) Do fees include costs charged to the tenant for repairs and replacements?**

No, the FARE Act does not require disclosure of repair or replacement costs.

#### **8) Can the written disclosure of itemized fees be part of the lease?**

Yes, provided the written fee disclosure is presented prior to lease signing, it may be part of the lease. If the written fee disclosure is part of the lease, it should be included as a rider. Otherwise, any change in the written fee disclosure (e.g., fee increase, addition of a fee) may require an amendment to the lease.

### **Broker Compensation**

#### **9) I have a tenant representation agreement with my client-tenant and successfully placed my tenant-client in a rental apartment. The listing broker for that apartment is not being compensated by the landlord, and asks if I could split my commission with the listing broker. Is this allowed under the FARE Act?**

No, this is not permitted because it could be viewed as a form of the landlord's agent collecting a fee from the tenant which is prohibited by the FARE Act.

**10) I am a tenant's broker and my tenant-client wants the rental apartment so much that the tenant-client is willing to pay the landlord's broker fee. Is this acceptable under the FARE Act?**

No, tenants cannot "opt out" from the provisions of the FARE Act.

**11) I am a tenant's broker. How can I ensure that I am not conditioning the rental of an apartment to a tenant upon that tenant's hiring me as their broker?**

The FARE Act prohibits *anyone* from conditioning the rental of an apartment on the tenant's retaining a particular broker, including a dual agent. In other words, no one can say to a tenant, "In order to rent this apartment, you must hire Broker A to be your broker." Prior to a tenant hiring a broker, the broker should inform the tenant that 1) it is not necessary to hire that specific broker to rent an apartment; and 2) the tenant has a choice in whom they wish to hire as a broker, or not hire a broker at all. The Tenant Broker Representation Agreement checklist includes these tenant acknowledgments. (Rev 8/25)

**12) I am a broker and I don't have a written agreement with the landlord. Rather, it is a handshake agreement. Does the FARE Act still apply to me?**

In New York State, oral agreements are valid and binding. The FARE Act's prohibition of collecting fees from the tenant would apply to this situation because the broker is the landlord's agent.

**Dual Agency**

**13) Does the FARE Act prohibit dual agency?**

No. The FARE Act does not prohibit dual agency. Where dual agents are receiving compensation from both the landlord and the tenant, both parties must give their informed consent.

**14) I am the landlord's broker and advertise the landlord's rental apartment. A tenant responds to the advertisement but decides that the apartment isn't suitable. Can I tell the tenant I have other listings that might be suitable? Could I act as a dual agent and collect fees from both the tenant and landlord?**

The FARE Act prohibits anyone from conditioning the rental of an apartment upon the tenant hiring a broker, including a dual agent who is a natural person. The FARE Act does not prohibit a tenant from choosing to hire their own broker and pay broker fees to the tenant's broker. Nor does the FARE Act prohibit brokers from advertising their services to tenants.

In the situation above, the broker may inform the tenant of other available apartments but cannot condition the rental of an apartment upon the hiring of that broker. The tenant must make an independent decision to hire the broker. The broker may act as a dual agent but must get consent from the tenant and the landlord in order to be paid by both parties. The best practice is to have written representation agreements with each party setting forth the agency or dual agency relationship, and the terms of compensation. (Rev 8/25)

**15) I am a manager at a brokerage firm. One agent represents a landlord advertising an apartment for rent. A tenant calls the firm to respond to the ad. Can another agent at the firm act as a co-broker and represent the tenant to view the apartment?**

Yes, two agents from the same firm may represent the differing sides of a rental transaction. The FARE Act does not prohibit dual agency within a brokerage firm. Dual agents acting in this matter should do so as Dual Agency with Designated Sales Agents (as set forth on the NYS Agency Disclosure Form) to limit their representation to their respective client in each transaction. (Rev 8/25)

**Landlord Liability**

**16) I am a landlord. Are there any disclaimers I could add onto rental listings to prevent brokers from creating an “agency” relationship with me?**

Landlords may still advertise rental listings but are strongly advised to do so only on their website, social media, and/or other communication channels under their control. If a landlord directs a broker to publish the landlord’s rental listing, the FARE Act will presume that broker to be the landlord’s agent, prohibiting that broker from collecting a fee from the tenant.

In the event a landlord wishes to advertise their listing but is not and/or does not wish to be represented by a broker, such rental listings could include a clear and conspicuous disclaimer stating: “This advertisement is for informational purposes only. This advertisement is not intended to create an agency relationship between a real estate licensee and the landlord. The landlord has not hired any broker in connection with the rental of this unit.”

We asked DCWP how landlords may further protect themselves from an unwanted creation of “agency” with brokers when such brokers advertise rental listings without permission or authority from the landlord.

**17) Could a "Courtesy of BROKER X" disclaimer on a rental listing rebut the presumption that the broker publishing such listing does so with permission of the landlord and thereby, allow the broker to collect a fee from a tenant?**

No, such a disclaimer will not rebut the presumption. The broker publishing such a listing is still presumed to be doing so with the permission of the landlord and cannot collect a fee from a tenant. Separate and apart from the FARE Act, 19 NYCRR § 175.25(b)(2) prohibits brokers from advertising for the lease of a property without the authorization of the property’s owner.

**Pending Transactions**

**18) I completed a lease transaction several months ago, prior to June 11, 2025. The tenant has owed me the fee for several months now and has still has not paid. I am considering taking legal action to collect my fee. Can I still do so?**

Yes, you may still collect those fees earned and owed to you prior to June 11, 2025 – the FARE Act’s effective date – even though it is past the FARE effective date. (Rev 8/25)

**Commissions on Placing Voucher Recipients in Rentals**

- 19) Does the payment of broker commissions to a tenant's agent by agencies and/or local and state governments in connection with voucher programs violate the FARE Act?**

We are still seeking further guidance from DCWP on the applicability of the FARE Act to the placement of voucher recipients in rental housing. (Rev 8/25)