

# WHAT YOU NEED TO KNOW

**LEGAL LINES** | Become familiar with the new Fair Housing regulations now in effect.

**F**air Housing regulations effective June 20, 2020, will have an impact on real estate-related activities.

The new Fair Housing regulations are divided into three sections: Housing and Anti-Discrimination Disclosure Form, Fair Housing Notice, and video and audio recording of all Fair Housing continuing education courses. Here are answers to some common questions about how to comply with each section.



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For downloadable copies of the Fair Housing Disclosure Form, Fair Housing Notice and more, visit the legal section of [NYSAR.com](http://NYSAR.com).

## HOUSING AND ANTI-DISCRIMINATION DISCLOSURE FORM (HADF)

**Q:** Is there a specific HADF I have to provide?

**A:** Yes. The HADF will be provided by the Department of State (DOS) and will contain substantive provisions of the New York State Human Rights Law. The HADF shall set forth how Human Rights Law complaints may be filed, and such other information as the DOS deems pertinent.

**Q:** Who do I need to provide the HADF to?

**A:** The new regulation, 19 NYCRR 175.28, requires licensees to provide the HADF to every consumer at first substantive contact.

First substantive contact is the same standard used for presentation of the Agency Disclosure Form.

**Q:** Do I need to give the HADF to all my current clients/customers on June 20 if first substantive contact occurred before the June 20 effective date?



**A:** The DOS has indicated that “License holders that have already established a ‘first substantive contact’ prior to the regulation’s effective date are not required to obtain a ‘late’ form.” However, as a best practice, NYSAR is recommending that licensees provide the HADF to all current clients and customers.

**Q:** Does the HADF apply to all types of properties?



**A:** Yes. The HADF is required to be presented for any type of property (residential, commercial, vacant land, new construction, etc.). There are no exceptions. According to 19 NYCRR 175.28(c), use of the HADF shall apply to “all real property

whether or not it is used or occupied, or intended to be used or occupied, wholly or partly, as a home or residence of one or more persons regardless of the number of units, and shall include: condominiums; cooperative apartments; vacant lands, including unimproved real property upon which such dwellings are to be constructed; or commercial properties.”

**Q:** How do I need to present the HADF?



**A:** The HADF may be provided to a prospective purchaser, tenant, seller or landlord by any of the following means: email, text, electronic messaging system, facsimile or hardcopy. Furthermore, an electronic communication containing a link to the disclosure notice required pursuant to paragraph (a) of this section shall be permissible, provided the communication also contains text to inform the prospective purchaser, tenant, seller or landlord that the link contains information regarding the New York State Human Rights Law. Oral disclosure does not satisfy the requirements.

**Q: Do I need to have the HADF signed?**



**A:** Yes, only if provided by hardcopy or electronic signature. The licensee would be required to obtain a signed acknowledgment from the prospective buyer, tenant, seller or landlord. If delivered via an electronic communication that does not permit an electronic signature and the communication also contains text to inform the prospective purchaser, tenant, seller or landlord that the link contains information regarding the New York State Human Rights Law, a signed HADF is not required, but proof of electronic delivery must be kept by the broker. Oral disclosure does not satisfy the requirements.

**Q: Do I need to keep a copy of the HADF?**



**A:** Yes, for a period not less than three years. If the consumer signed a hard copy, such signed disclosure notice shall be retained. If the consumer signed electronically, such electronically signed document shall be retained. If provided by other electronic means, a duplicate copy must be retained. NYSAR also recommends retaining proof of transmission (copy of email, text, fax delivery confirmation or other means to prove that the HADF was provided).

**Q: What if the consumer refuses to sign the HADF?**



**A:** The regulation provides for the same procedure if a consumer refuses to sign the Agency Disclosure Form. If the prospective buyer, tenant, seller or landlord declines to sign the disclosure notice, the real estate broker, licensed real estate salesperson or licensed associate broker shall set forth under oath or affirmation a written declaration of the facts regarding when such

notice was provided and shall maintain a copy of the declaration for not less than three years.

**FAIR HOUSING NOTICE (FHN)**

**Q: Is the Fair Housing Notice (FHN) different from the Anti-Discrimination Disclosure Form (HADF)?**



**A:** Yes. The FHN and HADF are completely different documents with different requirements for compliance.

**Q: What is the FHN?**



**A:** The new regulation, 19 NYCRR 175.29, requires every real estate broker to display the FHN “at every office

and branch office operated by such broker,” and it must be “prominently displayed in the window of such office and any branch office maintained by such broker if such broker also provides listings or other postings in the window of such location and must be visible to persons on that portion of the sidewalk adjacent to such office or branch office. If any office or branch office is not accessible from the sidewalk or if postings are otherwise prohibited by any other applicable law, then the fair housing notice shall be prominently posted in the same location the business license is posted pursuant to subdivision 3 of section 441-a of article 12 of the Real Property Law.”

**Q: Does the FHN need to be displayed anywhere else?**



**A:** Yes. A real estate broker, licensed real estate salesperson or licensed associate broker must display the FHN at all open houses of all real property. It should be displayed in an area where all attendees

at the open house will see it, and such display should be conspicuous.

**Q: Do I need to put the FHN on my website?**



**A:** Yes. “All websites created and maintained by real estate brokers, associate real estate brokers, real estate salespersons and any real estate team ... shall prominently and conspicuously display on the homepage of such website” a link to the FHN provided by the DOS. By prominently and conspicuously, the link should appear “above the fold” and should not require a consumer to scroll down the webpage to find the link.

**Q: Do I need to provide the FHN to consumers?**



**A:** You are not required to provide the FHN to consumers. However, the regulation requires that licensees conducting an open house or showing must have the FHN available and provide a copy if requested by the consumer.

**RECORDING OF FAIR HOUSING CONTINUING EDUCATION COURSES**

**Q: What is the requirement for recording Fair Housing continuing education courses?**



**A:** Every real estate school that has been approved to provide continuing education pertaining to fair housing and/or discrimination in the sale or rental of real property or an interest in real property must record the instructor of such course using both video and audio. The real estate school will be responsible for retaining the recording of the course for at least one year after the end of the course. Recordings can be maintained electronically on a computer, storage device or in the cloud. 📺