

# Real Estate Broker Risk Management Tips for 2024

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# What is a Broker's Duty of Supervision Over Associated Licensees?

- **Section §175.21(a) of DOS Rules and Regulations provides** “[t]he supervision of a real estate salesperson by a licensed real estate broker, required by subdivision l(d) of §441 of the Real Property Law, shall consist of regular, frequent and consistent personal guidance, instruction, oversight and superintendence by the real estate broker with respect to the general real estate brokerage business conducted by the broker, and all matters relating thereto.”
- The duty extends also to office managers.

# Tips for Limiting the Risks of Artificial Intelligence Use in Your Real Estate Business



# What is AI? How Can it be Used?

- AI is the simulation of human intelligence processes by machines, especially computer system.
- It's computer programming trained to assist with a variety of tasks that can learn from its mistakes.
- ChatGPT is a form of AI trained to produce human-like text and converse with people.
- AI platforms can create listing descriptions, property searches, social media posts, imagery, marketing content, and more.
- Crucial to make sure your office avoids the potential legal and ethical risks that may be associated with this technology.



“In the dimly lit corridors of justice, where the echoes of legal battles reverberate, the advent of Artificial Intelligence casts a foreboding shadow, painting a legal landscape fraught with peril and intrigue...”



# Who Said It?



## Who Said It?

Chat GPT Yesterday When I Asked it to  
“Describe the risks of AI in the style of John  
Grisham.”

# What Are Some Legal Risks of Using AI?

- **Inaccurate Information:**
  - Information is not always accurate or up-to-date.
  - Article 2: REALTORS must avoid exaggeration, misrepresentation or concealment of pertinent facts
  - Article 12: REALTORS must be honest and truthful in their real estate communications and advertising.
- **Bias & Possible Fair Housing Issues:**
  - Data and algorithms built into chatbots may incorporate the subtle prejudices of the humans who create them.
  - Doesn't matter if its unintentional.



# What Are Some Legal Risks of Using AI?

- **Privacy:**
  - Programs often collect and store data, which could include confidential information about real estate transactions or personal information.
- **Copyright:**
  - Not clear whether the person who used the tool or the designer of the tool owns the copyright.
  - Claims being made by copyright owners of information used to train AI tools.
  - Case law is unclear if work generated by AI can be copyrighted.

# How To Limit Legal Risk When Using AI

- Always review content for accuracy and suitability.
- Double-check to avoid AI-generated listing descriptions, articles, or community descriptions unintentionally including language or descriptions that may violate fair housing laws.
- Use AI for brainstorming topics - not entire articles or blogs.
- Never use AI to draft contracts, modify standard forms or provide legal advice to clients.
- Do not use AI to create work you want copyright protection for.
- Consider having an AI Acceptable Use Policy when it comes to AI use in advertising.

# Resources for Use of AI in Real Estate

- [Window to the Law: Legal Tips to Use AI in Your Business](#)
- [Realtor Magazine: Using AI to Enhance Listing Photos Can Be Legally Risky](#)
- [Realtor Magazine: AI Use in Real Estate Comes With Copyright Concerns](#)
- [NYSAR 2023 Fall Business Meeting - Legal Update - Artificial Intelligence](#)

# Cybersecurity Tips



**Cybercrime is a REAL threat!**

# Why Should I Be Worried About Cybercrime?

- Cybercrime in New York has risen 53% between 2016 and 2022, and New York had the third-highest number of ransomware attacks in the country in 2022.
- In 2022, Suffolk County was hit with a devastating cyber attack.
- In 2023, a ransomware attack crippled Rapattoni, a data host for many of the nation's Multiple Listing Services.
- Real Estate offices and agents (no matter the size) are targets.

# What Does Real Estate Cybercrime Look Like?

- **Phishing/vishing/smishing/pharming**: Fraudsters use unsolicited emails, text messages and phone calls from a purportedly legitimate company to obtain personal, financial and login credentials.
- **Wire Fraud**: Fraudsters compromising email accounts to effectuate fraudulent fund transfers.
- **Ransomware**: Cybercriminals install malicious software that locks users out of their systems or encrypts data making it inaccessible unless a ransom payment is paid.

# What Are the Impacts of a Cybersecurity Breach?

- Data loss
- Financial losses
- Loss of productivity
- Damage to your reputation
- Loss of Clients



# How Can You Prevent a Cyber Disaster In Your Office?

- Train & Educate Your Entire Office
- Enact Strong Password Policies
- Use Multi-Factor Authentication (MFA)
- Update Your Software
- Invest in Network Security
- Conduct Regular Security Testing
- Have an Incident Response Plan
- Backup Your Data
- Consider Cybersecurity Insurance



# Cybersecurity Resources for Brokers

- [Window to the Law: Creating a Cybersecurity Program](#)
- [Window to the Law: Protecting Your Business from a Ransomware Attack](#)
- [Window to the Law: Creating an Effective Data Security Plan](#)
- [Protecting your Business & Your Clients From Cyberfraud](#)
- [Cybersecurity Checklist: Best Practices for Real Estate Professionals](#)
- [NAR's Data Security & Privacy Toolkit](#)
- [What to Do If Your Business Faces a Ransom Threat](#)
- [Emerging Technology Series Episode 3: Ransomware](#)

# Tips for Avoiding Vacant Land Sale Scams





# Vacant Land Sale Scams Continue to Rise

- Growing problem on a national and local level.
- Scammers are taking advantage of low inventory - hoping brokers rush into listings.
- They impersonate sellers and contact an agent to ask about listing vacant lot quickly, often for below market value.
- They use public records to find details about the owner's identity, and even create legitimate-looking fake IDs.

# What Are the **Red Flags** of the Scam?

- Looking to list the property for significantly below market value and wants cash buyers.
- Emphasizes an urgency to sell quickly.
- Will never communicate in person or on video, preferring to text or email, and they respond QUICKLY!
- Claims to be out of the state or country.
- Wants a remote notary and closing using power of attorney.

# What Can You Do To Avoid the Scam?

- Before taking a listing for vacant land, demand an in-person meeting with the seller.
- If the seller refuses in-person, demand a zoom meeting.
- Ask for multiple forms of identification.
- Independently search the Internet for a recent picture of the seller.
- Check public records to verify owner's phone number and email.
- If you suspect that you are involved in a vacant lot scam, contact law enforcement, file a complaint at [IC3.gov](https://www.ic3.gov) and quickly remove MLS Listing and all advertisements.

# Educate Your Office on Vacant Land Sale Scams

- NAR has created a One Sheet on the subject, which is available [here](#).
- LIBOR has issued legal tips, including the most recent one available [here](#).



**NATIONAL ASSOCIATION OF REALTORS®**

## VACANT LAND SCAMS

October 2023 | NAR Legal Affairs

### RED FLAGS

Exercise caution if a potential client asks you to sell a vacant parcel or unoccupied property with one or more of these red flags:

- The potential client wants to list the property for significantly below market value.
- The potential client has a strong preference or requirement for cash.
- The potential client does not want a "For Sale" sign in the yard.
- The potential client emphasizes an urgency to sell quickly.
- The potential client never communicates in person or on video, preferring to text or email.
- The potential claims to be out of the state or country.
- The potential client will only use a remote notary and requests a remote closing.


### RECOMMENDED PRACTICES

- Exercise due diligence to verify the purported seller is the actual property owner, for example:
  - Ask for multiple forms of identification.
  - Request to meet the seller face-to-face.
  - Ask for proof of ownership of the property.
  - Ask the potential client about the area around the vacant property to see if they are familiar with the area.
- Conduct independent research to confirm the property owner, such as looking online for a recent photo or speaking to a neighbor.
- Verify the seller's email and phone number.
- Make sure you or the title company select the remote notary at closing.
- Ask the seller for a voided check and a disbursement authorization form; use a wire verification service to confirm the account information and ownership.
- If you suspect that you are involved in a vacant lot scam:
  - Contact law enforcement and file a complaint at [IC3.gov](https://www.ic3.gov).
  - Remove the listing from the MLS and take down any advertisements quickly.

 nar.realtor  (800) 874-6500  430 N. Michigan Ave // Chicago, IL 60611

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# NYS Property Condition Disclosure Act



**NEW YORK**  
STATE OF  
OPPORTUNITY.

**Division of  
Licensing Services**

New York State  
**Department of State**  
**Division of Licensing Services**  
P.O. Box 22001  
Albany, NY 12201-2001  
Customer Service: (518) 474-4429  
<https://dos.ny.gov>

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**Property Condition Disclosure Statement**

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**Name of Seller or Sellers:** \_\_\_\_\_

**Property Address:** \_\_\_\_\_

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**General Instructions:**  
The Property Condition Disclosure Act requires the seller of residential real property to cause this disclosure statement or a copy of thereof to be delivered to a buyer or buyer's agent prior to the signing by the buyer of a binding contract of sale.

**Purpose of Statement:**  
This is a statement of certain conditions and information concerning the property known to the seller. This Disclosure Statement is not a warranty of any kind by the seller or by any agent representing the seller in this transaction. It is not a substitute for any inspections or tests and the buyer is encouraged to obtain his or her own independent professional inspections and environmental tests and also is encouraged to check public records pertaining to the property.  
A knowingly false or incomplete statement by the seller on this form may subject the seller to claims by the buyer prior to or after the transfer of title. In the event a seller fails to perform the duty prescribed in this article to deliver a Disclosure Statement prior to the signing by the buyer of a binding contract of sale, the buyer shall receive upon the transfer of title a credit of \$500 against the agreed upon purchase price of the residential real property.  
"Residential real property" means real property improved by a one to four family dwelling used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons, but shall not refer to (a) unimproved real property upon which such dwellings are to be constructed or (b) condominium units or cooperative apartments or (c) property on a homeowners' association that is not owned in fee simple by the seller.

**Instruction to the Seller:**

- a. Answer all questions based upon your actual knowledge.
- b. Attach additional pages with your signature if additional space is required.
- c. Complete this form yourself.
- d. If some items do not apply to your property, check "NA" (Non-applicable). If you do not know the answer check "Unkn" (Unknown).

## New Flood Disclosures and Elimination of the \$500 "Opt Out" Credit

# Changes to Property Condition Disclosure Act

- Goes into effect March 20, 2024.
- Property Condition Disclosure Statement (PCDS) will have new questions related to flooding, including asking whether structure experienced any water penetration or damage due to seepage or a natural flood event, such as heavy rainfall, coastal storm surge, tidal inundation or river overflow.
- Sellers will no longer be able to "opt-out" with a \$500 credit to the buyer at closing.
- Will technically make the Property Condition Disclosure Statement required on every transaction in New York.



# Stay Tuned for Updated Forms

- New PCDS is not yet available and probably won't be until just before March 20, 2024.
- OneKey exclusive listing agreement and Property Condition - Buyers Rights & Sellers Obligations form on Instanet will be updated to remove reference to \$500 credit option.
- Will say only that seller's signed PCDS must be delivered to buyer or buyer's agent prior to buyer signing binding contract of sale; and copy of the PCDS containing the signatures of both the buyer and seller must be attached to the real estate purchase contract.

# Licensees' Obligations Remain Unchanged

- Listing broker/agent has duty to provide PCDS and timely inform each seller of the seller's obligations under the law.
- Buyer's agent or seller's agent dealing with a prospective buyer as customer has the duty to timely (before the buyer signs a binding contract of sale) inform the buyer of the buyer's rights and obligations under the law.
- As long as the agents fulfill their obligations "the agent shall have no further duties under this article and shall not be liable to any party for a violation of this article."

# Best Practices for PCDS

- You will want to document that you delivered the PCDS to the seller and that you informed sellers and buyers of their rights and obligations under the law.
- You should strongly recommend to buyer and seller clients that they discuss the ramifications and requirements of the PCDS with their attorneys.
- Licensees should not complete the form or help sellers answer questions.

# Tips for Moving Forward After the Sitzer/Burnett Class Action Verdict



# Cooperative Compensation Litigation

- NAR and four corporate brokerage defendants were sued in lawsuits Missouri (Burnett Case) and Illinois (Moehrl Case)
- Cases allege commission rates are too high, buyer brokers are paid too much, and NAR's rules and policies along with the corporate defendants' practices are the cause.
- Plaintiffs claim rules requiring listing brokers to identify offers of compensation to buyer brokers leads to artificially inflated commissions and damage to home sellers.

# Sitzer/Burnett Case

- The case covered the Kansas City, Mo.; St. Louis; Springfield, Mo.; and Columbia, Mo., markets.
- After 11-day trial, the jury found defendants liable in the case and awarded \$1.78 billion in damages.
- NAR has stated it will seek to reduce the jury's damages award and appeal.
- Many copycat lawsuits filed since -- currently 19 different cases.
- NAR has asked the the Judicial Panel on Multidistrict Litigation to consolidate cases with overlapping factual issues into a single multidistrict litigation in the the federal court in the Northern District of Illinois.

# What Has NAR Argued?

- Cooperative compensation rule ensures efficient, transparent and equitable marketplaces.
- Consumers are better off and business competition thrives because of how well local MLS broker marketplaces function.
- Sellers can sell their home for more and have their home seen by more buyers.
- Buyers have more choices of homes and can afford representation.
- Enables accessibility for first-time, low & middle income buyers.

**Compensation is always negotiable.** The seller decides what fee they are willing to pay for their broker's services and how much that listing broker should offer a broker who brings a buyer to close the transaction.



# What Should You Do in Response?

- ALWAYS let your clients know the value of working with a REALTOR®, how commissions are market-driven and negotiable, and how competitive the market for real estate services is.
- ALWAYS discuss compensation scenarios/arrangements in detail with your sellers and buyers; and put whatever agreement you've reached with them in writing.
- When you work with buyers, it's important to use buyer representation agreements and clearly advise your clients about the terms of the transaction.

# Explain That Commissions Are Always Negotiable

- NAR has long said that it is up to the listing broker and their clients to determine the amount of compensation to offer cooperating brokers.
- NAR recently confirmed the required communication of an offer of compensation to other MLS participants can be any amount, including \$0, and those offers are always negotiable.
- When NAR made this statement, OneKey® MLS updated its listing entry system to allow users to put in any amount, including \$0, in the cooperating broker compensation field.

To be clear, this does not mean this amount (\$0) must be offered.

Listing brokers in consultation with their seller clients can continue to offer compensation as they deem appropriate to facilitate the transaction and that compensation is negotiable.

It is crucial for the listing broker to have this transparent conversation with their seller clients and explain the benefits of offering cooperating broker compensation.

# What Resources Are Available to Help?

- NAR is providing case updates, articles, key points, videos and infographics, at [competition.realtor](https://www.competition.realtor).
- LIBOR is created brand new [Buyer Representation Resources Page](#) with information to help you articulate the value and consumer benefits of buyer agency.





# Tips for Supervising Your Office's Real Estate Advertising

# Associated Licensees' Web Advertising Requires Broker Approval and Supervision

Section 175.25(3) of DOS Rules and Regulations provides :

“Websites created and maintained by associate real estate brokers, real estate salespersons and teams are permitted, provided that said associate real estate brokers, real estate salespersons, and teams are duly authorized by their supervising real estate broker to create and maintain such websites and such websites remain subject to the supervision of the real estate broker with whom the licensees are associated while the website is live.”

# What is a Broker's Duty of Supervision When it Comes to Advertising?

- The broker is required to supervise and approve all advertising before it goes live.
- Salespersons often do not understand that it is the principal broker who must authorize advertising.
- Brokers should implement specific office policies that govern how associate brokers, licensed real estate salespersons and teams engage in advertising.
- The failure to have an organized system to monitor the activities of salespersons leaves a broker vulnerable to inappropriate advertising of salespersons who do not know their obligations or choose to disregard them.

# Associated Licensees' Websites Must Also Link to their Broker's Website

Section 175.25(3) of DOS Rules and Regulations also provides :

“In addition, a link to the broker or brokerage website with whom the associate broker, salesperson or team is associated is required on the homepage of the associate broker, salesperson, or team website unless the broker or brokerage does not have a website.”



# Make Your Office Aware of DOS Guidance on Advertising

- Remind your licensees that [New York's Real Estate Advertising Regulations](#) cover all “promotion and solicitation related to licensed real estate activity, including but not limited to, advertising via mail, telephone, websites, e-mail, electronic bulletin boards, business cards, signs, billboards, and flyers.”
- Make sure they are aware of [Real Estate Advertising Guidance](#) published by DOS.
- Make sure they and you review the DOS recommended [Real Estate Advertising Checklist](#) before placing new ads.



# Supervision of Advertising Extends to Social Media



- Broker supervision applies to advertising on social media.
- Facebook & Instagram are treated no different than a website.
- Advertising on social media requires broker's authorization.
- Licensees must make every attempt to comply with advertising regulations.
- The failure of a principal broker to have social media policies and to monitor the postings and advertising of salespersons can create exposure for broker.

# Tips for Avoiding Lawful Source of Income Discrimination



# What Is Lawful Source of Income (SOI)

- Became a Protected Class in NY effective April 12, 2019.
- Housing providers may ask about income, and about the source of income, and require documentation, in order to determine a person's ability to pay for the housing accommodation.
- But must accept all lawful sources of income equally.

## Lawful Source of Income Includes:

- Child support.
- Alimony.
- Foster care subsidies.
- Income derived from social security.
- Any form of federal, state, or local public assistance.
- Housing assistance including, but not limited to, Housing Choice Vouchers (Section 8) or any other vouchers.
- Any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and any other forms of lawful income.

# Major Undercover Testing on Lawful Source of Income

- Housing Rights Initiative has brought 3 lawsuits in last 3 years accusing approximately 200 property owners and brokers of denying housing access to prospective renters with vouchers.
- Lawsuits were based on results of undercover testing.

## *'She Wants Well-Qualified People': 88 Landlords Accused of Housing Bias*

A lawsuit by a watchdog group claims that its undercover investigation found widespread bias against tenants receiving federal housing assistance.

NEW YORK NEWS >

## **More than 100 NYC real estate professionals accused of discriminating against renters with government-issued vouchers**

BUSINESS

## **Long Island real estate companies face housing discrimination lawsuit**



# NYC Human Rights Commission Testing

- The Commission has had a source of income unit within the Law Enforcement Bureau, focused on addressing and combating voucher discrimination in housing.



**\$2,261,127**

**Total damages and penalties  
obtained for source of income  
discrimination since 2017.**





# What Can SOI Discrimination Look Like?

- Failing to respond to inquires from voucher holders.
- Making Any of the following statements:
  - I don't work with voucher holders.
  - I don't work with landlords who take vouchers.
  - Let me find out if the owner takes vouchers and get back to you.
  - This apartment does not take vouchers.
  - There is a "waitlist" for people with vouchers or programs.
  - This apartment only takes Section 8 tenants with jobs.
  - This apartment takes section 8, but you have to pay the rent for the first month or two.

# Tips to Avoid Lawful Source of Income Discrimination?

- Don't turn away prospects because they receive financial assistance.
- When meeting with prospects, make sure to tell them about all vacancies that meet their needs, regardless of their source of income.
- Follow standard procedures for ALL prospects to ensure that every person is treated the same way regardless of their source of income.
- Ask the same questions you would ask any other prospective tenant:
  - What area are you looking in?
  - How many bedrooms are you looking for?
  - What is your price range?
- Show voucher holders the same apartments that you would any other prospective tenant regardless of their source of income.



# Tips for Avoiding Disability Discrimination in Real Estate





**NFHA** NATIONAL FAIR HOUSING ALLIANCE™

- According to NFHA, Disability Discrimination is the most reported form of housing discrimination in the United States in 2022.
- 53% of all fair housing complaints stem from disability discrimination.
- Rental-related housing discrimination complaints were the most numerous -- 82.82% of all reports (27,336 complaints).

# These Numbers Have Resulted in More Undercover Testing in Rentals

**BUSINESS**

**HUD charges LI condo complex with discriminating against resident who needed support dogs**

**BUSINESS**

**Feds fine Brentwood landlord \$70G for disability discrimination**

**BUSINESS**

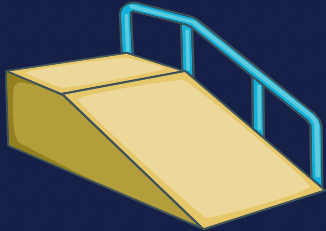
**LI rental complex reaches \$11G settlement over housing bias allegations**

**pays \$86,500 to settle disability discrimination case**

# So How Can You Help Your Licensees Avoid Disability Discrimination?

- Make Sure They Know and Understand the Law
  - Reasonable Modifications & Accommodations
  - Service & Emotional Support Animals
- Make Sure They Provide and Can Explain Required Disclosures & Notices
  - [Reasonable Accommodation & Modification Notice](#)
  - [NYS Anti-Discrimination Disclosure Form](#)
  - [NYS Fair Housing Notice](#)
- Give Them Tools to Educate Your Clients
  - [LIBOR's Seller Obligations and Landlord Obligations Flyers](#)

# What Are Reasonable Accommodations & Reasonable Modifications?



- **Reasonable Modification** - A structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises.



- **Reasonable Accommodation** - A change, exception, or adjustment to a rule, policy, practice, or service that may be necessary for a person with disabilities to have an equal opportunity to use and enjoy the premises.

# Reasonable Accommodations & Reasonable Modifications Disclosure Notice

- As of May 20, 2022 all landlords, managing agents and real estate licensees must provide a **Reasonable Modification and Accommodation Notice** to all prospective and current tenants of a “housing accommodation”.
- Licensees must provide at “first substantive contact” with a prospective tenant.
- Form is available [Here](#)



# Notice Must Be Posted at All Real Estate Offices and On Websites

- Brokers must post the Notice conspicuously at all real estate offices and branch offices operated by the broker.
- The Notice must be posted on all websites the broker creates and maintains by prominently and conspicuously displaying on the homepage of such websites a link to the Notice.



# Service and Emotional Support Animals...They Are Not Pets

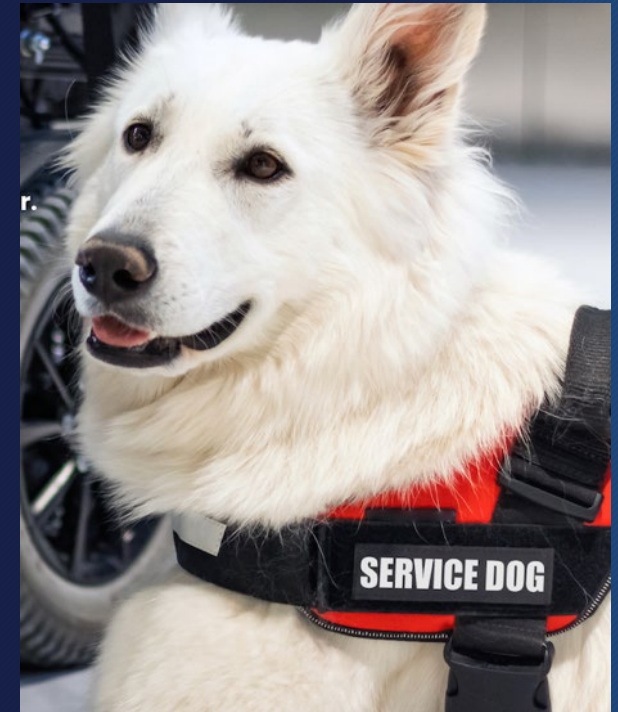


# What is the Difference Between a Pet and a Service or Emotional Support Animal?

- Service and emotional support animals are not “pets”.
- Service and emotional support animals are tools to assist a person with a disability.
- People with disabilities who require the use of service animals or emotional support animals are a protected class.

# How Should I Handle Service & Emotional Support Animals?

- Parties with dogs as service animals or emotional support animals must be treated in the same way as people without them.
- Persons with service and emotional support animals must be allowed to accompany a client or customer to an open house or showing.
- Only limited exception would be if the particular dog poses a direct threat or would cause substantial physical damage to the property of others, and such conclusions cannot be based on speculation or breed stereotype.



# What if its Not Apparent Someone Has a Service or Emotional Support Animal?

- If it is not apparent a dog is a service animal, only two questions can be asked: (1) "Is the animal required because of a disability?"; and (2) "What work or task has the animal been trained to perform?"
- **You cannot ask for medical documents, about the nature or extent of a person's disability or request proof that a service animal is certified.**
- If it is not apparent an animal is an emotional support animal, you can ask for a letter from a physician, mental health professional, social worker, or psychiatrist stating that the person requires an emotional support animal.

# Can Landlords Have a “No Pet” Policy?

- Yes. Landlords are not required to accept pets.
- **However, they are required to accept service or emotional support animals.**
- Landlords should consider using language in apartment listings to clarify that exceptions to a no pet policy are available as reasonable accommodations for people with disabilities.
- For example, instead of saying “no dogs,” a listing might say “no dogs except as reasonable accommodations for disabilities.”



# Can a Landlord Charge More to Keep a Pet in an Apartment?

- Yes, landlords can charge a higher monthly rent to allow a pet to occupy the premises (i.e. a monthly “pet rent”).
- However, this monthly “pet rent” cannot be charged to tenants with service or emotional support animals.
- Again, these animals are not “pets”.



# Home for All of Us: Committed to Delivering Fair Housing Across Long Island

- Raise awareness about fair housing issues, including importance of eliminating source of income and disability discrimination.
- Free Resources: Sellers & Landlord Obligations Under Fair Housing Laws Flyers



[homeforallofus.org](http://homeforallofus.org)