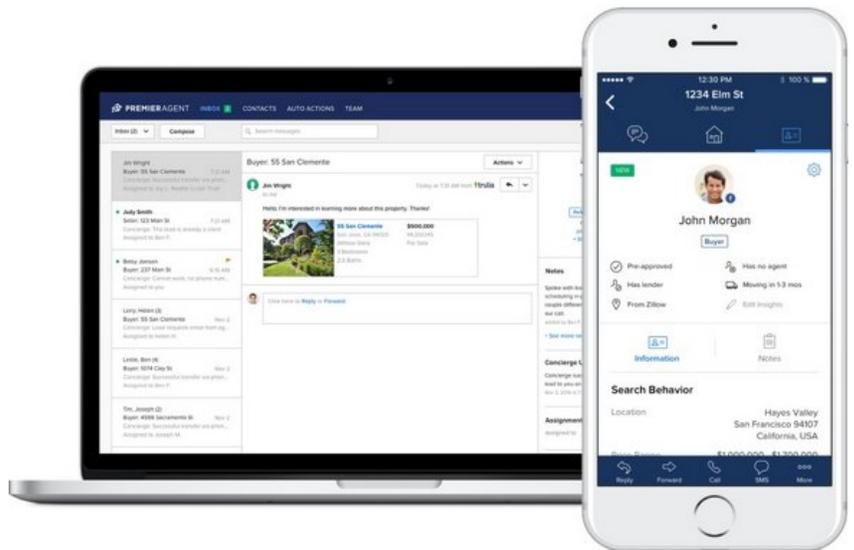


New York State Reviewing Online Real Estate Advertising Regulations

JD Allen | June 18, 2018

Brokers are still waiting on the New York State Department of State to issue guidelines on how to interpret existing real estate advertising regulations for online listing services. Many companies, including Zillow Group—the parent company of Zillow, Trulia, StreetEasy and RealEstate.com—expected the Department of State to weigh in during a meeting of the New York State Board of Real Estate on June 11, but the matter was not on the meeting’s agenda. The next meeting is in October.

The law’s review was spurred after industry leaders urged the Department of State to investigate whether Zillow Group’s Premier Agent program violates state code. The program is simple: real estate agents pay to advertise their contact information for all properties in a certain zip code, in hopes of representing a home buyer. The listing agents, who are helping homeowners sell properties, always have their information there, too. Both the listing agent and the buying agent get a commission.



Zillow Group spokesperson Emily Heffter said the state guidance is expected to include specifics on how and where listing portals must display a broker’s name and license type, as well as disclaimer information for exclusive listings.

“What we think is that if you are a home buyer, you should at least have the option, and it might benefit you, to have a buyer’s agent to represent your interests in the deal, which is pretty common across the country,” Ms. Heffter said.

In a March 2017 letter from the Real Estate Board of New York, or REBNY—a real estate industry trade association not to be confused with the state government’s Board of Real Estate—attorney Claude Szyfer called for the Department of State to review the Premier Agent program, because it allegedly solicits leads and advertises without the exclusive listing firm’s consent. Advertising law is detailed in the state’s Codes, Rules and Regulations, including “real estate brokers shall not advertise property that is subject to an exclusive listing held by another real estate broker without the permission of the listing broker.”

The fear is that consumers will be misled to brokers who do not have the exclusive on the property, and might not have the proper, up-to-date licensure, said Anthony Gatto, an attorney and the director of legal services at the New York State Association of Realtors.

“They are not doing new regulations ... they are just looking to see how regulations are applied to any third-party platform,” Mr. Gatto said. The ruling would not be specific to the Premier Agent program, but was the jumping off point of the state’s inquiry, he added.

Ms. Heffter contends the program is legal, but is used in New York City and on Long Island’s East End differently from the rest of the state.

“There is a big difference between advertising on a property that is the subject of another company’s exclusive, and what the program does,” Ms. Heffter said of Premier Agents. “It’s true that if I am an agent, I can’t just grab somebody else’s listing and throw my picture and phone number on it and advertise it as if it is my own. That is illegal. But I can do what StreetEasy and many other [websites] across the state do, and advertise as a buyer’s agent

on the listing that belongs to someone else.”

Since the beginning of the Department of State inquiry, Zillow Group has been working with the state to come up with solutions on how to best integrate—not abandon—the Premier Agent program to better adhere to current regulations and industry practices.

“The real estate property law protects the consumer, and to that end the question is, ‘Is it misleading to the consumer to have someone other than the listing broker on the face of that listing?’” said Judi Desiderio, the founder and CEO of Town & Country Real Estate. “They are challenging Zillow, which is not a brokerage house.”

Several real estate firms that do business on the East End did not respond to requests for comment, or declined to comment.

According to Mr. Szyfer’s letter, it’s possible agencies do not want to be associated with “violating the provisions” in state regulations, and are waiting for the state inquiry to pan out.

“This is going to apply to all real estate advertising online, including all brokerage sites, programs that brokerages use to share listings, and Realtor.com,” Ms. Heffter said. “We are expecting to make a few small changes to our sites.”

On Zillow Group’s front, Ms. Heffter said it would not be in the company’s interest to punish real estate agencies that question the legality of its Premier Agent program.

“We really focus on the consumer experience, and sometimes that upsets the industry. [The program] gives the buyer an advocate for a major transaction that most people don’t do many times in their lives,” she said. “To me, if you are an agent who is trying to sell a home, it makes sense to cooperate with Zillow Group because that’s where all of the consumers are going.”

Zillow Group has more than 1 billion users go to its websites every month, she said.

“We absolutely have no intention of cutting agents out of transactions. We think agents are crucial and that’s why we have set up a business model that helps consumers shopping for real estate connect with real estate agents to represent them in the transaction.”

Ms. Heffter said there are firms who do appreciate the potential opportunities the program brings to agents.

“Our industry will be better for the changes these companies are making and it will prepare us to flourish for many years to come,” Compass CEO and Founder Robert Reffkin said from his New York City office. “Zillow is obsessing about the consumer, and knows that if you create an incredible consumer experience it will create value for agents. They are also a lab of sorts, with the resources to evaluate all the new technology and sort through what is well suited to help consumers and real estate agents.” Compass is a member of REBNY.

Compass’s senior managing director, for the South Fork, John Gicking, clarified that “all brokers should comply with advertising rules established by the [state]” and that the industry should “welcome a move towards transparency.”

“If this investigation leads to clarity for consumers, it’s a good thing,” Mr. Gicking said.

It is unclear how the state’s guidance will affect Zillow Group’s bottomline. Premier Agent made up \$778 million of \$1.1 billion in revenue in 2017, according to company reports.