

REBNY Comment | May 12, 2025

## **REBNY Comment on The Department of Consumer and Worker Protection’s Proposed Rule Implementing a Penalty Schedule for Local Law 119 of 2024 (“FARE Act”)**

The Real Estate Board of New York (“REBNY”) is the City’s leading real estate trade association. Founded in 1896, REBNY represents commercial, residential, and institutional property owners, builders, managers, investors, brokers, salespeople and other organizations and individuals active in New York City real estate. On behalf of over 10,000 residential brokerage members, REBNY appreciates the opportunity to comment on the Department of Consumer and Worker Protection’s (“DCWP”) rules implementing a penalty schedule for Local Law 119 of 2024 (“FARE Act”).

As of this writing, there is a motion in federal court to block enforcement of the FARE Act during the pendency of litigation. The case is *Real Estate Board of New York, New York State Association of Realtors, et al. v The City of New York et al.*, 24-cv-09678. REBNY is confident that the Court will rule in its favor, granting the preliminary injunction and finding that the FARE Act infringes upon commercial free speech, violates the Contracts Clause of the US Constitution, and is pre-empted by New York State statute.

Nonetheless, in the unlikely event that the FARE Act survives constitutional scrutiny, REBNY requests DCWP to engage in future rulemaking to address concerns outlined at the end of this comment. For now, REBNY offers the following in connection with the rulemaking of penalties for violations of the FARE Act.

For violations of §20-699.21, the FARE Act imposes fines of “no more than \$1,000 for the first violation and not more than \$2,000 for each subsequent violation occurring within a two-year period.” The proposed rules establish fines of \$750 for the first violation, and \$1,800 for the second violation; and \$1,000 for the first default, and \$2,000 for subsequent defaults.

For violations of §20-699.22, the FARE Act imposes fines of “no more than \$500 for the first violation and not more than \$1,000 for each subsequent violation occurring within a two-year period.” The proposed rules establish fines of \$375 for the first violation, and \$900 for the second violation; and \$500 for the first default, and \$1,000 for subsequent defaults.



Most agents are independent contractors. Moreover, most agents are middle-class earners, paying for their own professional costs, health insurance and taxes. The proposed rules establish fines that almost reach the maximum statutory amounts. These fines are excessively high and should be set at more reasonable amounts. This reduction would allow DCWP to further increase the fines if there is widespread non-compliance. Moreover, fines do not need to be set near the statutory maximum given the Fare Act's grant of a private cause of action. The potential for initiating complaints against landlords, brokers and agents is increased by this language and is a serious financial concern—because such actions would also necessitate the incurring of attorneys' fees and other costs, even if there is a finding that no violation occurred.

REBNY also highlights the following topics for DCWP to address in future rulemaking if the FARE Act or any portion thereof goes into effect:

Limiting Landlord Liability – Because the FARE Act codifies a rebuttable presumption that a broker is acting with the landlord's permission upon publishing a listing of the landlord's rental property, landlords are concerned about liability for violations by brokers who are not, in fact, acting with the landlord's permission. Landlords need DCWP's help in creating a rule that could limit such liability where the landlord has not granted any permission or authority to the publishing broker. Appearing in court to rebut the presumption is overly burdensome, and also incurs attorneys' fees and other costs. Landlords have inquired whether listings could include disclaimers stating, in effect, "Only Brokers [Firms and names to be inserted] are authorized to publish or advertise this listing." However, REBNY recognizes that such a practice could lead to claims of anti-competitive behavior. Perhaps DCWP could issue an affidavit form for the landlord to rebut the presumption which would obviate the need for the landlord's personal appearance in a court proceeding.

Clarifying Fees Disclosure – The FARE Act states that prior to executing a lease, the landlord or her agent shall provide to the tenant "an itemized written disclosure of any fees that the tenant must pay to the landlord or to any other person at the direction of the landlord in connection with such rental." There needs to be more clarity as to what fees would qualify for such disclosure. Should prospective fees such as lost key or move-in fees be included? Should fees for damaging common space property be included? Or City-imposed penalties for illegal short-term subletting where the landlord has no authority to enforce? In cases where the rental unit is a cooperative or condominium, should the association or cooperative fees be included? DCWP needs to provide an exhaustive list of such fees to guard against any unnecessary penalties and private right of action.

Thank you again for this opportunity to comment on the draft rules.

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