

# REAL ESTATE WEEKLY

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## Brokerages aim to make things more black and white

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By Holly Dutton

New York City residential real estate is getting more and more transparent for buyers.

Broker disclosure and apartment square footage have been confusing and controversial topics in the past amongst the residential real estate community.

Recently, a lawsuit filed by millionaire promgirl.com founder David Wilkenfield over broker disclosure regarding his \$13 million penthouse at 200 Chambers Street made news, drawing attention to the state law that went into effect in 2011.

The law requires licensed real estate agents and brokers to inform buyers and sellers about who represents whom, especially in dual agency cases where a broker represents both the buyer and the seller.

The Real Estate Board of New York praised the measure when it was signed into law by David Paterson in 2010. (The law did not go into effect until Jan. 1, 2011)

“The revised agency disclosure law provides additional safeguards for sellers, buyers, tenants, landlords and brokers to ensure that transactions move forward fairly with all parties understanding who is representing whom,” said REBNY President Steven Spinola in a press release from August 2010.

**Adam Leitman Bailey**, a real estate lawyer who is representing Wilkenfield in the lawsuit, said the law increases transparency, and if you don’t follow the law of presenting the form before even showing an apartment, a broker could be liable to pay up to four times their commission back to the buyer or seller.

In an e-mail, a spokesperson for Platinum Properties said the company had no comment on the suit.

Rory Bolger, a senior associate broker with Citi Habitats, said when the law was passed and the disclosure form was instituted, his firm went through several training sessions on how to use it properly.

“It provides written clarity to your client,” said Bolger. “Whether it be buyer or seller. The purpose is to eliminate grey and have it in writing.”

The law puts into writing what was previously handled verbally, including making it clear to a buyer or seller that their broker is looking out for their fiduciary responsibility.

“It’s a positive thing in the industry,” said Bolger. “It can get a little tricky; that’s why there was so much training. We were hit hard with training.”

When dealing with the grey area of measuring square footage, many brokers turn to outsourcing to get the job done.

“There’s no real regulation on how it’s measured,” said Bolger. “It has been the case since 1900.”

Though there have been guidelines set, there has been no real definitive way of measuring square footage. While one apartment may be measured by the interior walls, another may be measured from the exterior walls. The former is often the case with co-ops.

With new developments and condo conversions, an offering plan includes the square footage, sometimes including common space.

“As a broker, you do need to be careful, you can’t just assume what was previously listed by another broker,” said Bolger. “Apartments are sold and sold again, you can look at the history, but that’s not what you should go by.”

Bolger recalled an exclusive listing on 86th Street where the square footage was very important.

“I definitely wanted to list it, it was one of the largest one bedroom’s,” he said of the 900 s/f apartment.

There was a track record of the listing, but he wanted to be absolutely sure, so he brought in a “meticulous” professional who used a laser measuring device to calculate the square footage, which turned out to be correct.

“There’s definitely a factor in price per square foot,” said Bolger. “Buyers will get very caught up in what’s been trading in comparable apartments in that building relative to price per square foot.”

He recommended bringing in a professional to measure the square footage or having a disclaimer that the square footage is estimated.

Anthony Lolli is CEO and founder of Rapid Realty, a fast-growing residential rental brokerage with 60 locations throughout New York City and Long Island.

Agents with his firm typically turn to professionals when it comes to square foot measurements, by using companies that specialize in measuring square footage and providing quick renderings that brokers can provide in their listings.

“A lot of brokers are getting smart and doing that, because it’s cheap enough and there are enough virtual companies out there,” said Lolli. “A lot of times they’ll give you a package deal.”

Handheld laser measuring devices are relatively inexpensive and can be purchased at a hardware store, though as Lolli cautions, they “are only as good as the person holding it.”