

**SUSMAN GODFREY L.L.P.**

A REGISTERED LIMITED LIABILITY PARTNERSHIP  
32ND FLOOR  
1301 AVENUE OF THE AMERICAS  
NEW YORK, NEW YORK 10019-6022  
(212) 336-8330  
FAX (212) 336-8340  
WWW.SUSMANGODFREY.COM

---

SUITE 5100  
1000 LOUISIANA STREET  
HOUSTON, TEXAS 77002-5096  
(713) 651-9366

---

SUITE 950  
1901 AVENUE OF THE STARS  
LOS ANGELES, CALIFORNIA 90067-6029  
(310) 789-3100

---

SUITE 3800  
1201 THIRD AVENUE  
SEATTLE, WASHINGTON 98101-3000  
(206) 516-3880

---

STEVEN SHEPARD  
DIRECT DIAL (212) 729-2010

---

E-MAIL [SSHEPARD@SUSMANGODFREY.COM](mailto:sshepard@susmangodfrey.com)

March 13, 2017

Whitney A. Clark, Esq.  
New York Department of State—Division of Licensing  
Director, Division of Licensing  
One Commerce Plaza  
99 Washington Avenue  
Albany, New York 12231

RE: *Introduction of StreetEasy's Premier Agent Program in New York City*

Dear Ms. Clark:

I write on behalf of Zillow, Inc. ("Zillow") and in response to the letter to you from Mr. Claude Szyfer dated March 3, 2017, which Mr. Szyfer sent on behalf of the Real Estate Board of New York, Inc. ("REBNY"). Zillow opposes REBNY's request for an "advisory opinion." This Division's regulation is clear, and it is just as clear that agents using Zillow's StreetEasy program do not violate that regulation. If this Division were to grant the meeting with REBNY that Mr. Szyfer requests, then Zillow respectfully requests the opportunity to attend and participate in that meeting.

**Background on StreetEasy and the "Premier Agent" Program**

Zillow's StreetEasy website helps consumers and real estate professionals navigate New York City's real estate market. By advertising their clients' properties on the StreetEasy website, listing agents reach a large group of interested buyers. Listing agents, or their brokers, choose to send their listings to StreetEasy, subject to StreetEasy's terms, and StreetEasy displays the listings free of charge. For their part, buyers use StreetEasy to browse a wide range of available properties and to contact Premier Agents who can represent the buyers in seeking properties in the Zip Code that the buyers are interested in. StreetEasy

March 13, 2017

Page 2

promotes transparency, free flow of information, and robust competition. By doing so, StreetEasy benefits all consumers and real estate agents.

Listing agents themselves seek out StreetEasy to advertise their properties—for the simple reason that StreetEasy is a proven way for these agents to reach potential buyers. StreetEasy identifies both the brokerage and the listing agent on the listings (under the tab “Seller’s Agent”):

The screenshot shows a StreetEasy listing for Gramercy Park. The page layout includes a header with navigation links (SALES, RENTALS, BUILDINGS, RESOURCES, BLOG), a search bar, and a main content area. The main content area features a large image of a living room, a description of the property, and a list of highlights and amenities. A red arrow points to the 'Seller's Agent Info' tab, which is highlighted in blue. The 'Seller's Agent Info' tab shows the listing agent's name, Jeffrey Dyksterhouse, and the brokerage, Compass. Below this, the listing agent's name, Kasey Fredericks, and the brokerage, Compass, are also listed. A link to 'Learn More About Dual Agency' is provided at the bottom of the agent information section.

**StreetEasy** Sign In Register

SALES RENTALS BUILDINGS RESOURCES BLOG

e.g. address, building, agent Q

★ SAVE ✉ SHARE 🖨️ PRINT ⚠️ PROBLEM?

This sale has been saved by 3 users.

DAYS ON MARKET  
0 days on StreetEasy

MONTHLY CHARGES  
Common Charges: \$627  
Monthly Taxes: \$1,537

ESTIMATED PAYMENT  
Est. Payment: **\$8,361**

**DESCRIPTION**

GRAMERCY PARK: One Bedroom, One Bathroom, Condo. At the corner of 2nd Ave and 17th St, adjacent to Stuyvesant Square Park, stands a venerable limestone and brick edifice. Its gleaming slate roof and Beaux Arts detailing attest to its pedigree as a National Landmark. Originally built by JP Morgan in 1899 as Manhattan's first maternity hospital, Rutherford Place is now a fashionable condominium... [\[more\]](#)

**HIGHLIGHTS**

- Cats and Dogs Allowed
- Elevator
- Full-time Doorman
- Washer/Dryer In-Unit

**AMENITIES**

BUILDING AMENITIES

- Bike Room
- Gym
- Live-in Super
- Valet

**CONTACT AGENT**

Learn More **Seller's Agent Info**

**COMPASS** Jeffrey Dyksterhouse  
Compass

**COMPASS** Kasey Fredericks  
Compass

[Learn More About Dual Agency](#)

In addition, the “Listing Provided By” section of each listing provides buyers with the listing agent’s name, phone number, brokerage, and a link to the brokerage’s website.

LATEST DISCUSSIONS	ABOUT GRAMERCY PARK
<a href="#">Be the first to discuss this sale ▶</a>	<a href="#">Gramercy Park ▶</a>

---

**LISTING PROVIDED BY**

Jeffrey Dyksterhouse and Kasey Fredericks, [Compass](#), (917) 757-1142

March 13, 2017

Page 3

Listing agents, or their brokers, also maintain control over their listings on StreetEasy. The listing agents generate these advertisements, edit their contents, and can remove their listings from StreetEasy at any time.

For their part, buyers use StreetEasy to browse the listing agents' advertisements and compare properties. Buyers can easily identify the listing agents and contact the listing agents directly, either through the "Seller's Agent" tab or the "Listing Provided By" section. "Premier Agent" offers buyers the opportunity to contact an independent agent who can represent them. Buyers may contact a Premier Agent by entering their information in a "Learn More" tab:

The screenshot shows the StreetEasy website interface. At the top is a blue navigation bar with the StreetEasy logo, 'Sign In', and 'Register' links. Below this is a secondary navigation bar with links for SALES, RENTALS, BUILDINGS, RESOURCES, and BLOG. A search bar on the right contains the placeholder text 'e.g. address, building, agent'. The main content area features a large image of a modern living room. Below the image is a 'DESCRIPTION' section for 'GRAMERCY PARK: One Bedroom, One Bathroom, Condo'. To the right of the description is a 'CONTACT AGENT' section. This section has two tabs: 'Learn More' (which is highlighted) and 'Seller's Agent Info'. The 'Learn More' tab contains a form with fields for 'Your Name', 'Phone Number', and 'Email', followed by a text area where the user has entered 'I'm interested in 305 2nd Avenue #516.' Below the form is a blue 'SEND MESSAGE' button. A green arrow with the text '“Learn More” Tab' points to the 'Learn More' tab. At the bottom of the 'CONTACT AGENT' section, it says 'Or call (347) 292-9919 for more info'.

By entering their information, buyers may contact one of the Premier Agents in the Zip Code where the advertised property is located. Premier Agents are licensed real estate agents who offer their services to buyers seeking properties in that specific Zip Code. In short, StreetEasy serves the entire residential real estate market. On the one hand, sellers and listing agents may advertise their properties to potential buyers. On the other hand, buyers may browse all of the listing agents' advertisements and—through either the "Seller's Agent" tab or the "Listing Provided By" section—may contact the listing agent.

In addition, buyers may use the Premier Agent feature to contact an independent agent to represent them in seeking and purchasing properties in the Zip Code that they are interested in.

**“Premier Agents” Are Not Violating Section 175.25**

Mr. Szyfer’s letter to you is incorrect when he accuses the Premier Agents of violating certain sections of this Division’s regulation on “Advertising.” N.Y. Comp. Codes R. & Reg. tit.19, § 175.25 (2017). Section 175.25 governs advertisements of property—not advertisements of agents’ services. Paragraph (b)(1) states (emphasis added): “Only a real estate broker is permitted to place or cause to be published advertisements *related to the sale or lease of property.*” Just so—and it is the *listing agent*, not the Premier Agent, who “cause[s] to be published” the “advertisements related to the sale” of the listing agent’s property. Listing agents are, of course, free to remove their advertisements at any time. They choose not to do so because StreetEasy is a popular and effective way to reach interested buyers.

When Premier Agents enter into a contract with Zillow to receive contacts from buyers who are interested in a particular Zip Code, the Premier Agents do not thereby “place” or “cause to be published” any “advertisement related to the sale or lease of property.” The Premier Agent has no control over any advertisement, and no control over which property’s listing may generate a contact. As the Premier Agent is advertising his or her own services and not any particular property, Section 175.25 does not apply to the Premier Agent program – this includes, without limitation, subsections (b)(2)(b), (c)(4) and (d)(6), which were specifically referenced in Mr. Szyfer’s letter.

REBNY’s letter uses a flawed “billboard” metaphor when it suggests that the Premier Agent program is “identical to” a Premier Agent “advertising another firm’s listing on the billboard without identifying that firm, and including just a telephone number . . . for the consumer to use” to contact the Premier Agent. Szyfer Letter, at 5. The accurate metaphor is this: The *listing agent* creates the billboard for its listing, where she identifies herself as the “selling agent” for the property. The listing agent controls that billboard and may take it down at any time. The Premier Agent program is the equivalent of a second billboard, erected nearby, which offers to connect the consumer to an agent in the listing’s Zip Code.

March 13, 2017

Page 5

**REBNY Seeks to Suppress Competition and Prevent Buyers from Obtaining Their Own Representation**

Rather than take down their own billboards (that is, remove their listings from StreetEasy) the listing agents and their representatives at REBNY are asking this Division to help them to suppress competition and to encourage dual agency (that is, to encourage buyers to engage the listing agent to represent them as well as the seller). REBNY's intent is to make it more difficult for interested buyers to find and contact independent buyers-side agents to represent them.

REBNY's novel interpretation of this Division's regulations would harm buyers, would harm buyers-side agents, and would make New York's real estate market less transparent and less competitive.

**Zillow Respectfully Requests An Opportunity To Be Heard**

Zillow does not believe that this Division needs to issue an "advisory opinion." Section 175.25 is clear, and it is also clear that Premier Agents do not violate that regulation when they receive contacts from buyers interested in a particular Zip Code. Nevertheless, if the Division were to agree to the meeting requested by REBNY, Zillow respectfully requests an opportunity to attend and to be heard at that meeting.

Please contact me directly at [sshepard@susmangodfrey.com](mailto:sshepard@susmangodfrey.com), or by phone at 212-792-2010.

Thank you for your time and attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "S. M. Shepard".

Steven M. Shepard

CC: Mr. Claude Szyfer