

Real Estate Brokerage Records Go Electronic — Well Sort-Of

By Andrew Lieb

Starting on October 13, 2014, real estate brokerages are authorized to maintain their business records, concerning the sale of residential property, electronically, as a result of revised regulation 19 NYCRR §175.23, which states as follows (bolded indicate new language):

(a) Each licensed broker shall keep and maintain for a period of three years, paper and/or electronic records of each transaction effected through his or her office concerning the sale of real property used or occupied, or intended to be used or occupied, wholly or partly, as the home or residence of one or more persons improved by a one-to-four family dwelling, or a condominium or cooperative apartments but shall not refer

to unimproved real property upon which such dwellings are to be constructed. Records to be kept and maintained shall contain:

- (1) The names and addresses of the seller and the buyer;
- (2) the broker prepared purchase contract or binder, or if the purchase contract is not prepared by the broker, then the purchase price and the amount of deposit (if collected by broker);
- (3) the amount of commission paid to broker;
- (4) the gross profit realized by the broker if purchased by him or her for resale;
- (5) any document required under Article 12-A of the Real Property Law and



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(6) the listing agreement or commission agreement or buyer-broker agreement.

(b) In some transactions, the broker may not be provided a copy of the documents required to be maintained by subdivision (a) of this section. In such instances, the broker will not be found to have violated the requirements of this section.

Of note, this amended regulation does not apply to vacant land, lease transactions and commercial deals. Nonetheless, it is advisable that brokerages maintain the following documents in such stated transactions:

- (1) RPL §443 Agency Disclosure Form/Affirmation of refusal or, instead, proof of compliance with 19 NYCRR 175.7 Disclosure should RPL §443 be inapplicable;
- (2) Listing Agreement/Fee Arrangement;
- (3) Name and contact information of seller/lessor and buyer/lessee;
- (4) Date of transaction with term of rental, amount of any deposits, and sale/rental amount;
- (5) Proof of commission paid, and amount;
- (6) Any contracts prepared by the broker or its salesperson(s); and
- (7) Identity of salesperson/associate broker who handled the transaction.

Additionally, such documents should be maintained in paper form and not electronically (both paper and electronic, jointly, is acceptable). The reason for the inconsistent record-keeping obligations on real estate brokerages, dependent on type of transaction, is that another, albeit unamended regulation, also requires record retention, to wit: 19 NYCRR

§175.21(b), which states as follows:

Supervision of Salesperson by Broker. The broker and salesperson shall keep written records of all real estate listings obtained by the salesperson, and of all sales and other transactions effected by, and with the aid and assistance of, the salesperson, during the period of his association, which records shall be sufficient to clearly identify the transactions and shall indicate the dates thereof. Such records must be submitted by the salesperson to the Department of State with his application for a broker's license.

In such, the unamended regulation, 19 NYCRR §175.21(b), expressly requires "written records" and the brokerage regulations, as a whole and set forth at 19 NYCRR §175, indicate, in light of the rules of statutory construction, that had the Department of State intended to provide for electronic record keeping under the obligations set forth at 19 NYCRR §175.21(b) it would have done so. Consequently, brokerages are advised to maintain physical "written records" for everything except for the express carve-out provided by the amended 19 NYCRR §175.23. Your author calls upon the Department of State to make their regulations consistent and to amend 19 NYCRR §175.21(b) to coincide with 19 NYCRR §175.23.

Note: Andrew M. Lieb is the Managing Attorney at Lieb at Law, P.C., a law firm with offices in Center Moriches and Manhasset. Mr. Lieb serves as a Co-Chair of the Real Property Committee of the Suffolk Bar Association and is the Special Section Editor for Real Property to The Suffolk Lawyer.

FREEZE FRAME



Suffolk County Bar Association Treasurer Justice M. Block and his wife Sheila Goloboy would like to announce the birth of their new baby, Cooper Jonathan Block.